

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) SCOPE OF TITLE/701. Scope of title.

ANIMALS (VOLUME 2 (2008) 5TH EDITION)

1. INTRODUCTION

(1) SCOPE OF TITLE

701. Scope of title.

This title is concerned with the law relating principally to the keeping, health and welfare (including conservation) of animals¹.

There are, however, some areas of law touching upon certain animals, or upon specific matters relating to animals, which are treated elsewhere in this work. These include the keeping and breeding of animals for the purposes of agriculture²; fishing and fisheries³; protection of whales and seals⁴; the property held by the Crown in certain animals⁵; matters relating to meat and other foodstuffs derived from animals⁶; the conditions for the slaughter of animals for food⁷; and veterinary medicinal products⁸.

1 See further PARA 703. As to the classification of animals in law see PARA 702.

2 See **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1058 et seq. This includes artificial insemination of livestock.

3 See **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 789.

4 See **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1070 et seq.

5 See **CROWN PROPERTY**.

6 See **FOOD**.

7 See **FOOD**.

8 See **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 212 et seq. As to the regulations of the veterinary professions see PARA 1126 et seq.

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702. Classification.

In law the term 'animals' includes all living organisms belonging to the animal kingdom, except human beings. However, when it is employed in statute, the term is commonly defined to have a more restricted meaning. There is no comprehensive statutory definition of the term 'animals', and it is variously defined for the purposes of particular Acts¹. Accordingly, the range of creatures which it embraces may vary greatly, depending upon the legislative context². The more general meaning is used throughout this title, except where an express meaning is appropriate³.

Historically, animals have been classified as 'domestic' or 'wild', and many of the common law principles of ownership, property and theft depend upon this classification⁴.

1 Eg the Animal Welfare Act 2006 (see PARA 817 note 23); and the Animal Health Act 1981 (see PARA 1041).

2 Thus in the Boarding Establishments Act 1963, 'animal' means only a dog or a cat (s 5(2); see PARA 938 note 1), whereas in the Zoo Licensing Act 1981, the term encompasses 'animals of the classes *Mammalia*, *Aves*, *Reptilia*, *Amphibia*, *Pisces* and *Insecta* and any other multi cellular organism that is not a plant or a fungus' (s 21(1); see PARA 944 note 1).

3 3 Co Inst 109; 1 Hall PC 512. See *Nye v Niblett* [1918] 1 KB 23. The Animals Act 1971 effected a major change in the law of strict liability for the acts of wild animals: by ss 1, 2, 6(1), (2), such liability only exists in the case of animals of a 'dangerous species', defined, inter alia, as a species not commonly domesticated in the British Islands. See PARA 747. For definitions of 'domestic' and 'wild' animals see PARAS 708, 710 respectively. As to the British Islands see PARA 747 note 5.

4 See PARA 708 et seq.

UPDATE

702-706 Classification ... The Welsh Ministers

NOTES--Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(2) SOURCES OF LAW/703. Legislation and common law.

(2) SOURCES OF LAW

703. Legislation and common law.

The principles of ownership of animals are derived from the common law, which has been long settled¹. Certain other limited areas also take their derivation from the common law, such as the concept of agistment². The application of general principles of law, in such contexts as the sale³ or theft⁴ of animals, is the subject of a combination of common law and statute.

The law relating to (1) the health of animals⁵; (2) the welfare of animals and the protection of animals from cruelty⁶, including the regulation of scientific experiments on animals⁷; (3) the conservation of species⁸; (4) the keeping of animals in establishments such as zoos⁹ or riding stables¹⁰; (5) the keeping of dangerous wild animals¹¹; (6) the keeping, breeding and sale of dogs¹²; (7) certain criminal and civil liabilities of owners or keepers for damage caused by their animals¹³; (8) game rights¹⁴; and (9) the practice of veterinary surgery¹⁵, is largely embodied in primary and secondary legislation, which is discussed throughout this title.

1 See PARA 708 et seq.

2 See PARA 721 et seq.

3 See PARA 725 et seq.

4 See PARA 736 et seq.

5 See generally PARA 1040 et seq.

6 See generally PARA 817 et seq.

7 See PARA 875 et seq.

8 See PARA 973 et seq.

9 See PARA 943 et seq.

10 See PARA 940 et seq.

11 See PARA 1029 et seq.

12 See PARA 902 et seq.

13 See PARA 747 et seq.

14 See PARA 763 et seq.

15 See PARA 1126 et seq.

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702-706 Classification ... The Welsh Ministers

NOTES--Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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704. European law.

The European Community has issued much legislation of relevance to this title, some directly applicable and some requiring to be implemented by domestic legislation.

Of particular importance are the controls imposed on the trade in endangered species¹, and the provisions concerning movement of animals², prevention of the spread of disease³, the conservation measures to be adopted by zoos⁴, the treatment of animals kept for farming purposes, during transport, and at slaughter⁵, and the mutual recognition of veterinary qualifications⁶.

In general, the Community and the member states are required, in formulating the Community's agriculture, transport, internal market and research policies, to pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the member states relating in particular to religious rites, cultural traditions and regional heritage⁷.

1 See PARA 960 et seq.

2 See PARA 869.

3 Much of the subordinate legislation issued under the Animal Health Act 1981 is made in pursuance of EC Directives: see generally PARA 1040 et seq.

4 See PARA 945.

5 See PARAS 866, 868 et seq.

6 See PARA 1139.

7 Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) Protocol 33 (added by the Treaty of Amsterdam). However, in Case C-189/01 *Jippes v Minister van Landbouw, Natuurbeheer en Visserij* [2001] ECR I-5689, ECJ, the view of the court was that this does not amount to a general principle of Community law.

UPDATE

702-706 Classification ... The Welsh Ministers

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Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(3) ADMINISTRATION/705. The Secretary of State.

(3) ADMINISTRATION

705. The Secretary of State.

Subject to certain exceptions¹, and also to the exercise of functions by the Welsh Ministers², the central administration of the legislation relating to animals is the responsibility of the Secretary of State³. In most instances this refers to the Secretary of State for Environment, Food and Rural Affairs⁴, though in particular cases it refers to the Home Secretary⁵.

1 Eg the supervision of the practice of veterinary surgery by the Privy Council: see PARA 1156. Any other exceptions to this general statement are noted where the functions in question are described.

2 See PARA 706.

3 In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1. The office of Secretary of State is a unified office, and in law each Secretary of State is capable of performing the functions of all or any of them: see text and note 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355. As to the discharge by veterinary inspectors and managers of certain of the Secretary of State's functions in relation to animal health see PARA 1120.

4 The Secretary of State for Environment, Food and Rural Affairs is the successor, for all purposes material to this title, to the Minister of Agriculture, Fisheries and Food, and to the Secretary of State for the Environment, Transport and the Regions (who was the successor to the Secretary of State for the Environment): see the Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001, SI 2001/2568; and the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794. Consequently, any reference to 'the minister' or 'the ministers' (eg in the Animal Health Act 1981 s 86, where the division of functions between 'the ministers' is described), in so far as it referred to the Minister of Agriculture, Fisheries and Food may now be taken to be a reference to the Secretary of State for Environment, Food and Rural Affairs.

5 This is the case in relation to legislation governing dangerous dogs and dog breeding establishments (see PARAS 912, 931), and to scientific procedures conducted on animals (see PARA 875 et seq). Other relevant functions of the Home Secretary were transferred to the Secretary of State for Environment, Food and Rural Affairs by the Transfer of Functions (Miscellaneous) Order 2001, SI 2001/3500, art 6.

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702-706 Classification...The Welsh Ministers

NOTES--Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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706. The Welsh Ministers.

Many statutory functions previously vested in Ministers of the Crown are now exercisable in relation to Wales by the Welsh Ministers¹. Functions described in this title which have been transferred to the Welsh Ministers include functions under the Local Government Act 1888², the Finance Act 1908³, the Destructive Imported Animals Act 1932⁴, the Docking and Nicking of Horses Act 1949⁵, the Dogs (Protection of Livestock) Act 1953⁶, the Protection of Animals (Anaesthetics) Act 1954⁷, the Pests Act 1954⁸, the Agriculture (Miscellaneous Provisions) Act 1972⁹, the Bees Act 1980¹⁰, the Animal Health Act 1981¹¹, the Zoo Licensing Act 1981¹², the Wildlife and Countryside Act 1981¹³, the Animal Health and Welfare Act 1984¹⁴, the Deer Act 1991¹⁵, the Local Government Act 1988¹⁶, the Dangerous Dogs Act 1991¹⁷, the Protection of Badgers Act 1992¹⁸, the Bees Act 1980¹⁹, and the Animal Health Act 1981²⁰.

In general, Acts which have come into force since the establishment of the National Assembly for Wales make specific provision, if desired, for the exercise of functions in relation to Wales²¹.

1 Pursuant to the establishment of the Welsh Assembly Government under the Government of Wales Act 2006 Pt 2 (ss 45-92) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**), statutory functions relating to animals, including functions under subordinate legislation, so far as exercisable in relation to Wales, are now almost exclusively the responsibility of Welsh Ministers (ie the First Minister and the Welsh Ministers established under ss 46, 48: see s 45(2); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**). These functions were previously transferred to the National Assembly for Wales by Order in Council under the Government of Wales Act 1998 s 22 (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 3, Sch 1; the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 2, Sch 1; and the National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044, arts 2, 3, Sch 1) or, in the case of functions conferred under enactments subsequent to the Government of Wales Act 1998, by virtue of particular provision made under those enactments: see the Government of Wales Act 2006 s 162(1), Sch 11 para 30; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. Further transfers of Ministerial functions to the Welsh Ministers may be effected by Order in Council pursuant to s 58, Sch 3 paras 1-8. As to the exercise of transferred functions and the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see Sch 11 paras 33-35 (in the case of functions transferred to the Assembly by Order in Council under the Government of Wales Act 1998 s 22) or the Government of Wales Act 2006 Sch 3 para 9 (in the case of functions transferred to the Welsh Ministers by Order in Council under s 58); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

2 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

3 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

4 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Destructive Imported Animals Act 1932 see PARA 1031.

5 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Docking and Nicking of Horses Act 1949 see PARA 1086.

6 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Dogs (Protection of Livestock) Act 1953 see PARA 924.

7 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

8 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Pests Act 1954 see PARAS 865, 1021-1022.

9 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and the Transfer of Functions (Wales) (No 1) Order 1978, SI 1978/272, Schs 1, 2. The relevant provision for this purpose is the Agriculture (Miscellaneous Provisions) Act 1972 s 19; see PARA 864.

10 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1, which transferred only those functions under the Bees Act 1980 previously exercisable by the Secretary of State for Wales: see PARA 1112 et seq.

11 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1, which transferred the functions under the Animal Health Act 1981 exercisable by 'the appropriate Minister', and the functions of 'the Ministers' so far as exercisable by the Secretary of State for Wales. As to the Animal Health Act 1981 see PARAS 868 et seq, 1040 et seq.

12 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Zoo Licensing Act 1981 see PARA 943 et seq.

13 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. The relevant provisions for this purpose are the Wildlife and Countryside Act 1981 ss 2(6), 16; see PARAS 996, 999, 1006.

14 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. The relevant provision for the purposes of this title is the Animal Health and Welfare Act 1984 s 3; see PARA 1115.

15 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. The relevant provisions for this purpose are the Deer Act 1991 ss 2, 7, except that in relation to s 7(5)(b) only the function of the Secretary of State as 'agriculture minister' is transferred to the Assembly; see PARAS 976, 978.

16 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. The relevant provision for the purposes of this title is the Local Government Act 1988 s 37; see PARA 902.

17 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. The relevant provisions for this purpose are the Dangerous Dogs Act 1991, except for s 1; see PARA 911 et seq.

18 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Protection of Badgers Act 1992 see PARA 984 et seq.

19 See the National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044, Sch 1. As to the Bees Act 1980 see PARAS 1112-1114.

20 See the National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044, Sch 1. The relevant provisions for this purpose are the Animal Health Act 1981 except for Sch 1. As to the Animal Health Act 1981 see PARA 1040 et seq.

21 Eg the Fur Farming (Prohibition) Act 2000 ss 5, 6 (see PARA 867); the Animal Welfare Act 2006 ss 16, 61, 66, 68 (see PARAS 817, 821-822).

UPDATE

702-706 Classification ... The Welsh Ministers

NOTES--Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

706 The Welsh Ministers

NOTE 9--SI 1978/272 amended: SI 2010/630 (Wales).

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707. Local authorities.

Local authorities¹ exercise a variety of functions under the legislation considered in this title, most notably in relation to the conservation of species², the licensing of zoos³ and other establishments where animals are kept⁴, and animal health⁵.

1 The meaning of 'local authority' must be drawn from the particular legislation under consideration. It may be observed, however, that a number of statutory definitions of that and cognate terms make reference to borough, district or county councils, or in Wales to county or county borough councils. The structure of such authorities, and of local government generally, is considered in **LOCAL GOVERNMENT** vol 69 (2009) PARA 1 et seq, and in relation to London, in **LONDON GOVERNMENT**.

2 See PARA 994 et seq.

3 See PARA 943 et seq.

4 See PARAS 931 et seq, 938, 940 et seq, 1029, 1030.

5 See PARA 1040 et seq.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(1) OWNERSHIP/(i) Domestic Animals/708. Meaning of 'domestic animals'.

2. ANIMALS AS THE SUBJECT OF PROPERTY

(1) OWNERSHIP

(i) Domestic Animals

708. Meaning of 'domestic animals'.

The term 'domestic animals' includes all those domestic or tame animals as by habit or training live in association with man¹. An animal which does not exist in a wild state anywhere in the world is in law a domestic animal². It is a question of law, not fact, whether an animal is within the class of domestic animals or wild animals³.

¹ 3 Co Inst 109; 1 Hall PC 512. See *Nye v Niblett* [1918] 1 KB 23. Such animals are referred to as *domitae* or *mansuetae naturae*.

² *McQuaker v Goddard* [1940] 1 KB 687, [1940] 1 All ER 471, CA (camel at Chessington Zoo). Judicial notice will be taken of the ordinary course of nature in regard to the position of animals: *McQuaker v Goddard* [1940] 1 KB 687, [1940] 1 All ER 471, CA. A domestic animal which reverts to a wild state is in law no longer domestic but wild: *Falkland Islands Co v R* (1864) 2 Moo PCCNS 266.

³ *McQuaker v Goddard* [1940] 1 KB 687, [1940] 1 All ER 471, CA; *Pole v Peake* [1998] NPC 121, [1998] EGCS 125, CA. As to the expression 'undomesticated animals' see *Broughton v Bower* [2006] EWCA Civ 632, 150 Sol Jo LB 707 (the words 'undomesticated animals (including horses, ponies and geese)' in an undertaking could not have the effect of putting those animals within the category of undomesticated animals; all that they had done was to extend the meaning of the expression so far as was necessary to prohibit the keeping of three defined species of domesticated animals).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(1) OWNERSHIP/(i) Domestic Animals/709. Absolute property in domestic animals.

709. Absolute property in domestic animals.

Domestic animals, like other personal and movable chattels, are the subject of absolute property. The owner can maintain a claim for their detention or conversion, or for trespass to goods in respect of them, and retains his property in them if they stray or are lost¹.

As a general rule the property in the young of domestic animals is in the owner of the mother², but in the case of a lease of livestock the progeny belong to the lessee in the absence of express stipulation to the contrary³.

1 *Putt v Roster* (1682) 2 Mod Rep 318. The owner of a lost dog may maintain a claim in conversion, and the finder has no right to detain it pending payment for its keep: *Binstead v Buck* (1777) 2 Wm Bl 1117. Merely keeping and feeding an animal does not, apart from contract, confer any right of lien: see **BAILMENT**.

For examples of trespass to animals see *Wright v Ramscot* (1667) 1 Saund 84 (killing dog); *Anderson v Buckton* (1719) 1 Stra 192 (infecting cattle; but cf *Wright v Hetton Downs Co-operative Society* (1883) Cab & El 200); *Thompson v Berry* (1723) 1 Stra 551 (chasing bull); *Dye v Leatherdale and Simpson* (1769) 3 Wils 20 (taking hog); *Oxley v Watts* (1785) 1 Term Rep 12 (working stray horse); *Dand v Sexton* (1789) 3 Term Rep 37 (beating dog); *Carruthers v Hollis* (1838) 8 Ad & El 113 (driving sheep into highway); *Bunch v Kennington* (1841) 1 QB 679 (beating dog); *Ellis v Loftus Iron Co* (1874) LR 10 CP 10 (defendant's horse injuring plaintiff's mare).

2 Brooke's Abridgment, 'Propertie' para 29; cf 2 Bl Com (14th Edn) 389-399. The common law follows the maxim of the civil law: *partus sequitur ventrem*.

3 *Wood v Ash and Foster* (1586) Owen 139; *Tucker v Farm and General Investment Trust Ltd* [1966] 2 QB 421, [1966] 2 All ER 508, CA. Note that the ownership of cygnets is divided between the owners of the cock and hen swans: *Case of Swans* (1592) 7 Co Rep 15b; and see also PARA 720.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(1) OWNERSHIP/(ii) Wild Animals/A. PROPERTY IN LIVING WILD ANIMALS/710. Meaning of 'wild animals'.

(ii) Wild Animals

A. PROPERTY IN LIVING WILD ANIMALS

710. Meaning of 'wild animals'.

The term 'wild' (*ferae naturae*) applied to animals includes not only those animals which are savage by nature but also those of a more mild or timid nature which cannot be classed as domestic or tame animals¹.

¹ As to animals which, though originally wild, or *ferae naturae*, have been tamed and are actually in a state of subjection, see PARA 712. Domestic animals which have reverted to a wild state are *ferae naturae*: see *Falkland Islands Co v R* (1864) 2 Moo PCCNS 266.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(1) OWNERSHIP/(ii) Wild Animals/A. PROPERTY IN LIVING WILD ANIMALS/711. No absolute property in wild animals.

711. No absolute property in wild animals.

There is no absolute property in wild animals while living, and they are not goods or chattels¹. There may, however, be what is known as a qualified property in them, either (1) *per industriam*², (2) *ratione impotentiae et loci*³, or (3) *ratione soli* and *ratione privilegii*⁴. This qualified property is defeasible, for if the animal has no intention to return, but resumes its wildness and is at large again and not under pursuit, it is free and may be taken by another person⁵. Thus the special right of property, called qualified property, if conferred *ratione impotentiae et loci*, *ratione soli* or *ratione privilegii*, is in substance an exclusive right to reduce the wild animal into possession⁶, but if acquired *per industriam* it is an exclusive right to the possession of the wild animal which, in the case of a living animal, will continue while it has the intention to return⁷.

1 *Case of Swans* (1592) 7 Co Rep 15b. The ownership of cygnets is divided between the owners of the cock and hen swans: *Case of Swans* (1592) 7 Co Rep 15b.

2 See PARA 712.

3 See PARA 713.

4 See PARA 714.

5 2 Bl Com (14th Edn) 393, cited with approval in *Hamps v Darby* [1948] 2 KB 311, [1948] 2 All ER 474, CA; *Case of Swans* (1592) 7 Co Rep 15b.

6 *Blades v Higgs* (1865) 11 HL Cas 621; *Keble v Hickringill* (1706) as reported in 11 Mod Rep 73. Cf *Young v Hichens* (1843) 6 QB 606 (fishery; fish not completely reduced into possession: no property); *Aberdeen Arctic Co v Sutter* (1862) 4 Macq 355, HL (custom of Greenland whale fishery; property only in a whale held fast by a line).

7 See 2 Bl Com (14th Edn) 391-392, cited with approval in *Hamps v Darby* [1948] 2 KB 311, [1948] 2 All ER 474, CA; *Purcell v Minister for Finance* [1939] IR 115.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(1) OWNERSHIP/(ii) Wild Animals/A. PROPERTY IN LIVING WILD ANIMALS/712. Qualified property per industriam.

712. Qualified property per industriam.

A qualified property in living animals *ferae naturae* obtained *per industriam* arises by lawfully taking, taming, or reclaiming them¹. Animals *ferae naturae* become the property of any person who takes, tames, or reclaims them, until they regain their natural liberty². Animals such as deer, swans, and doves are the subjects of this qualified property, which is lost if they regain their natural liberty, and have not the intention to return³.

Thus a claim for trespass or conversion will lie for taking a captive thrush, singing bird, muskrat, parrot or ape, because, although they are *ferae naturae*, they have been held to be merchandise and valuable when in a state of captivity⁴; and for taking doves out of a dovehouse⁵, hares, pheasants, or partridges in a warren or inclosure⁶, deer in a park⁷, a hawk if tame⁸, fish in a stew pond⁹, rabbits in a warren¹⁰, swans marked or in private waters¹¹, or bees in a hive.

Bees are *ferae naturae*, and there is thus no property in them except by reclamation. So if a swarm settles on a tree, no property passes until the bees are hived; when hived, they become the property of the hiver; and if a swarm leaves the hive this property continues in the hiver so long as they can be seen and followed¹².

1 *Case of Swans* (1592) 7 Co Rep 15b; *Blades v Higgs* (1865) 11 HL Cas 621. In many instances the taking, etc, of wild animals is unlawful: see PARAS 973-993.

2 Bracton, lib ii, cap i.

3 *Case of Swans* (1592) 7 Co Rep 15b; Bracton, lib ii, cap i. See also *Hamps v Darby* [1948] 2 KB 311, [1948] 2 All ER 474, CA (pigeons); *Pole v Peake* [1998] NPC 121, [1998] EGCS 125, CA (pheasants).

4 Brooke's Abridgment, 'Trespas' para 407; *Grymes v Shack* (1610) Cro Jac 262. Except when authorised by licence (see PARA 1006), live wild birds and their eggs cannot, however, now be lawfully sold: see the Wildlife and Countryside Act 1981 s 6; and PARA 1007.

5 Com Dig Trespass (A 1); Fitz Nat Brev 211.

6 Fitz Nat Brev 208. As to wild duck see *Lord Fitzhardinge v Purcell* [1908] 2 Ch 139.

7 *Mallock v Eastly* (1685) 3 Lev 227.

8 *Fines v Spencer* (1572) 3 Dyer 306b.

9 *Pollexfen and Ashford v Crispin* (1671) 1 Vent 122.

10 Fitz Nat Brev 208.

11 *Case of Swans* (1592) 7 Co Rep 15b. There is much learning in this case relating to swans: see further **CROWN PROPERTY**.

12 Bracton, lib ii, cap 1; 2 Bl Com (14th Edn) 392-393; *Quantrill v Spragge* (1907) 71 JP Jo 425; *Kearry v Pattinson* [1939] 1 KB 471, [1939] 1 All ER 65, CA; cf *Hannam v Mockett* (1824) 2 B & C 934. But the hiver has no right to follow the swarm on to another person's land without permission: *Kearry v Pattinson* [1939] 1 KB 471, [1939] 1 All ER 65, CA. The animus revertendi appears to be inferred from following the swarm.

UPDATE

712 Qualified property per industriam

NOTES--Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(1) OWNERSHIP/(ii) Wild Animals/A. PROPERTY IN LIVING WILD ANIMALS/713. Qualified property *ratione impotentiae et loci*.

713. Qualified property *ratione impotentiae et loci*.

The owner of land has a qualified property *ratione impotentiae et loci* in the young of animals *ferae naturae* born on the land until they can fly or run away¹, as where hawks, herons or rabbits make their nests or burrows on the land and have young; and a claim of trespass² will lie for taking young animals so born³.

1 *Case of Swans* (1592) 7 Co Rep 15b. Coke treats the young of wild animals while powerless to escape as the subject of 'possessory property' in the owner of the land, and although this falls short of absolute property, which cannot apply to animals *ferae naturae*, yet a claim for trespass would lie.

2 *Case of Swans* (1592) 7 Co Rep 15b; *Fitz Nat Brev* 207, 213.

3 *Blades v Higgs* (1865) 11 HL Cas 621; *Ewart v Graham* (1859) 7 HL Cas 331.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(1) OWNERSHIP/(ii) Wild Animals/A. PROPERTY IN LIVING WILD ANIMALS/714. Qualified property *ratione soli* and *ratione privilegii*.

714. Qualified property *ratione soli* and *ratione privilegii*.

The owner of land who has retained the exclusive right to hunt, take and kill animals *ferae naturae* on his own land has a qualified property *ratione soli* in them for the time being while they are there¹, but if he grants to another the right to hunt, take and kill animals *ferae naturae* on his land, by licence or grant of shooting or sporting rights², the grantee has a qualified property *ratione privilegii*³. Such a grant is an incorporeal hereditament and an interest in realty, and amounts to a licence of a profit à prendre which can only be validly granted or demised by deed⁴.

1 *Blades v Higgs* (1865) 11 HL Cas 621.

2 As to game rights see PARA 763 et seq; and **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 789 et seq; **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 166.

3 *Blades v Higgs* (1865) 11 HL Cas 621; *Keble v Hickringill* (1706) 11 Mod Rep 74. Cf *Gott v Measures* [1948] 1 KB 234, [1947] 2 All ER 609, DC, where it was said that sporting rights confer no property in wild game; 'property' in the context of the judgment of Lord Goddard CJ in this case must mean absolute property. The effect of this decision was overruled by the Criminal Damage Act 1971 s 5(3): see PARA 742. As to a tenant's right under the Ground Game Acts to take and kill hares and rabbits see PARA 772.

4 *Ewart v Graham* (1859) 7 HL Cas 331; Law of Property Act 1925 ss 52, 205(1)(ix); and see **EASEMENTS AND PROFITS A PRENDRE**.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(1) OWNERSHIP/(ii) Wild Animals/B. PROPERTY IN DEAD WILD ANIMALS/715. Absolute property in dead wild animals.

B. PROPERTY IN DEAD WILD ANIMALS

715. Absolute property in dead wild animals.

Although there is only a qualified property in animals *ferae naturae* while they are alive, yet if they are killed, or die, there is an absolute property in the dead animal, which vests in the owner or occupier of the land or the grantee or licensee of the shooting or sporting rights, as the case may be, who may maintain a claim against anyone infringing his rights therein¹.

¹ *Fitzgerald v Firbank* [1897] 2 Ch 96, CA; cf *Lowe v Adams* [1901] 2 Ch 598. See, however, the Theft Act 1968 s 4(4); and PARA 737. Thus a person who kills and carries away a wild animal is not guilty of theft; this is so even if he carries it away after having temporarily abandoned it, provided no one else is in course of reducing it into possession: see s 4(4). For the cases in which a person may be guilty of theft of a dead wild animal see PARA 737.

UPDATE

715-717 Property in Dead Wild Animals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(1) OWNERSHIP/(ii) Wild Animals/B. PROPERTY IN DEAD WILD ANIMALS/716. Wild animals killed by trespasser.

716. Wild animals killed by trespasser.

The absolute property which the owner or occupier of land, or the grantee of the privilege, has in dead animals *ferae naturae* is not confined to animals killed by him or his agents, and if the animals are killed by a trespasser, the trespasser has no property in them¹, and a claim for conversion will lie against him². Thus where poachers take rabbits, sell them, and send them away by rail, the servants of the owner of the land are justified in following them up and taking possession of them from the purchaser³.

If a trespasser starts an animal *ferae naturae* in the ground of one person, and hunts it into the ground of another and there kills it, the property has been held to be in the killer⁴, who, however, is liable to a claim of trespass for hunting in either ground. This view of the law has been adversely criticised⁵, but it has been received for so long that it is not now likely to be altered by judicial decision.

1 *Sutton v Moody* (1697) 1 Ld Raym 250; and see *Blades v Higgs* (1865) 11 HL Cas 621.

2 *Earl of Lonsdale v Rigg* (1856) 11 Exch 654; affd sub nom *Rigg v Earl of Lonsdale* (1857) 1 H & N 923, Ex Ch. The position as to theft, however, is governed by the Theft Act 1968 s 4(4): see PARA 737.

3 *Blades v Higgs* (1865) 11 HL Cas 621.

4 *Churchward v Studdy* (1811) 14 East 249, where a huntsman maintained trespass for a dead hare against the owner of the land upon which the animal was killed by hounds.

5 See *Blades v Higgs* (1865) 11 HL Cas 621; and cf *Gundry v Feltham* (1786) 1 Term Rep 334; *Paul v Summerhayes* (1878) 4 QBD 9, DC (foxhunting); and see PARA 779.

UPDATE

715-717 Property in Dead Wild Animals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(1) OWNERSHIP/ (iii) Game/717. Meaning of 'game'.

(iii) Game

717. Meaning of 'game'.

There is no comprehensive statutory definition of the term 'game'¹, but it has been variously defined for the purposes of particular Acts. Thus in the Game Act 1831, 'game' is deemed to include hares, pheasants, partridges, grouse, heath or moor game and black game². This definition appears also in the Night Poaching Act 1828, but with the addition of bustards³. The Poaching Prevention Act 1862, however, omits bustards and adds rabbits, woodcock, snipe, and the eggs of pheasants, partridges, grouse and black or moor game⁴. In the Game Laws (Amendment) Act 1960, 'game' includes hares, pheasants, partridges, grouse, heath or moor game, black game, bustards, woodcocks and snipes⁵.

The term 'ground game' was introduced by the Ground Game Act 1880, and means hares and rabbits⁶.

The meaning of the word 'game' in a deed is a matter of the construction of the document⁷.

1 See *Jeffryes v Evans* (1865) 19 CBNS 246. As to the meaning of 'game' in agreements in leases reserving the right to kill game, and as to the reservation of shooting and sporting rights generally, see PARA 766. As to deer see PARA 973 et seq.

2 Game Act 1831 s 2 (amended by the Statute Law Revision (No 2) Act 1888; and the Protection of Birds Act 1954 s 15(2), Sch 6). Game, whether dead or alive, or wild or tame, is within the definition (*Loomes v Baily* (1860) 3 E & E 444; *Harnett v Miles* (1884) 48 JP 455, DC; *Cook v Trevenner* [1911] 1 KB 9, DC), but the Game Act 1831 does not apply to game killed abroad (*Guyer v R* (1889) 23 QBD 100, DC). Some provisions of that Act are expressly extended to include other creatures: see eg s 31 (extended to include woodcock, snipe and rabbits); and PARA 785.

3 Night Poaching Act 1828 s 13 (amended by the Statute Law Revision (No 2) Act 1888).

4 Poaching Prevention Act 1862 s 1.

5 Game Laws (Amendment) Act 1960 s 4(5).

6 Ground Game Act 1880 s 8.

7 See *Inglewood Investment Co Ltd v Forestry Commission* [1989] 1 All ER 1, [1988] 1 WLR 1278, CA (on the construction of a particular deed containing a reservation of sporting rights deer were excluded from the definition of 'game'); *Pole v Peake* [1998] NPC 121, [1998] EGCS 125, CA (grant of right of rearing game existed alongside right of shooting; 'game' to be construed in the same way in each case). See further PARA 766.

UPDATE

715-717 Property in Dead Wild Animals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(1) OWNERSHIP/ (iii) Game/718. Rights over game.

718. Rights over game.

There is no absolute property in game, which belongs to the class of wild animals, but the qualified property *ratione soli* which an owner or occupier of land has in such animals¹ is recognised by the law intervening to protect private interests in game by limiting the right over it to certain classes of persons². This qualified property becomes absolute when the game is killed³ or otherwise reduced into possession⁴, whether this is done by the owner of the land, someone claiming under him, or someone acting without his authority⁵. A possible exception arises where the game is pursued from elsewhere and killed and taken by the hunter on land in different occupation from that where it was started, in which case it has been held that it belongs to the hunter⁶.

1 See PARA 714.

2 See *Blades v Higgs* (1865) 11 HL Cas 621; and *Cattell v Ireson* (1858) EB & E 91. As to game rights generally see PARA 763 et seq.

3 *Case of Swans* (1592) 7 Co Rep 15b; *Blades v Higgs* (1865) 11 HL Cas 621.

4 ie by being tamed or made captive, and retained in possession. As to the theft of such animals see PARA 737.

5 *Blades v Higgs* (1865) 11 HL Cas 621; and see *Rigg v Earl of Lonsdale* (1857) 1 H & N 923, Ex Ch.

6 *Sutton v Moody* (1697) 1 Ld Raym 250. The decision was doubted by Lord Chelmsford in *Blades v Higgs* (1865) 11 HL Cas 621, but it has not been overruled. The hunter will, of course, be liable to proceedings for trespassing in search of game; see PARA 716.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(1) OWNERSHIP/ (iii) Game/719. Right of property in eggs of game birds.

719. Right of property in eggs of game birds.

The right of property in the eggs of game birds follows the principle of the right over game in general, instead of that of the right over young or captive game¹, that is to say, the property in them is qualified, not absolute.

In order that the property may become absolute, the eggs must first have been collected from the nests or otherwise reduced into possession². The taking of eggs from the nests of wild birds does not amount to theft³, but, as in the case of game generally, the qualified right of property receives recognition and support from provisions of the game laws which create special offences in the case of taking or destroying the eggs of certain birds, and thereby protect them against trespassers⁴.

1 See PARA 713.

2 *R v Stride and Millard* [1908] 1 KB 617, CCR.

3 *R v Stride and Millard* [1908] 1 KB 617, CCR. In this case the words 'one thousand pheasants' eggs of the goods and chattels of and of and belonging to W G' were held to be a sufficient averment that the eggs were the subject of larceny, although the indictment contained no allegation that the eggs had been reduced into possession: see PARA 801. Taking eggs of game birds that are tame or in captivity would no doubt amount to theft, but it would be necessary in the absence of an averment of reduction into possession to state in the indictment that they were the eggs of a tame or captive bird: *R v Stride and Millard* [1908] 1 KB 617; *R v Gallears* (1849) 1 Den 501. See also the Theft Act 1968 s 4(4); and PARA 801.

4 The Game Act 1831 s 24 provides penalties for destroying or taking the eggs of 'game' (see PARA 717 text to note 2), swan, wild duck, teal or widgeon: see PARA 1002. The Poaching Prevention Act 1862 s 1 includes within its protection as 'game' the eggs of pheasants, partridges, grouse and black game or moor game: see PARA 717. As to the protection afforded to the eggs of other wild birds under the Wildlife and Countryside Act 1981 see PARA 1003.

UPDATE

719 Right of property in eggs of game birds

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(1) OWNERSHIP/(iv) Animals Property of the Crown/720. Animals deemed to be property of the Crown.

(iv) Animals Property of the Crown

720. Animals deemed to be property of the Crown.

The Crown generally takes property in royal fish, namely whales and sturgeon, taken in the seas forming part of the Crown's dominions¹; in wild and unmarked swans²; and estrays³.

1 See **CROWN PROPERTY** vol 12(1) (Reissue) PARA 229.

2 See **CROWN PROPERTY** vol 12(1) (Reissue) PARA 230.

3 See **CROWN PROPERTY** vol 12(1) (Reissue) PARA 272.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(2) AGISTMENT AND OTHER CONTRACTS/(i) Agistment/721. Nature of contract of agistment.

(2) AGISTMENT AND OTHER CONTRACTS

(i) Agistment

721. Nature of contract of agistment.

A contract of agistment¹ arises where one man, the agister, takes another man's cattle, horses or other animals to graze on his land for reward, usually at a certain rate per week, on the implied term that he will redeliver them to the owner on demand². Agistment is in the nature of a contract of bailment³; it confers no interest in the land and therefore does not require to be in writing⁴.

1 The term agistment is said to be derived from the French *gyser*, to lie, because the beasts are there levant and couchant: see 4 Co Inst 293.

2 2 Bl Com (14th Edn) 452; *R v Croft (Inhabitants)* (1819) 3 B & Ald 171. Agistment would apparently not amount to a breach of a covenant not to permit another person to use or occupy land: *Richards v Davies* [1921] 1 Ch 90.

3 See **BAILMENT**.

4 I.e. under the Law of Property (Miscellaneous Provisions) Act 1989 s 2; see *Jones v Flint* (1839) 10 Ad & El 753. As to when writing is required see **DEEDS AND OTHER INSTRUMENTS**.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(2) AGISTMENT AND OTHER CONTRACTS/(i) Agistment/722. Liability of agister.

722. Liability of agister.

The agister is not an insurer of the beasts taken in by him, but he must take reasonable and proper care of them, and is liable for injury caused to them by negligence or by neglect of such reasonable and proper care¹. If the animals are stolen without the default of the agister and it is proved that he did not use reasonable diligence to recover them, the onus is on the agister to prove that his failure to use such diligence made no difference to the result². Where the owner is aware of the dangerous state of a field in which the animals are to be pastured, the agister will not be liable for injury occurring thereby³.

1 *Smith v Cook* (1875) 1 QBD 79; *Broadwater v Blot* (1817) Holt NP 547. Thus he must make good the loss in case of injury if he puts a horse in a field with heifers, knowing that a bull is kept on adjoining land separated only by a shallow ditch, and has several times been found in the field, although he does not know it is vicious (*Smith v Cook* (1875) 1 QBD 79); or if he puts a horse in a field where there is a barbed wire fence concealed by long grass (*Turner v Stallibrass* [1898] 1 QB 56, CA); or leaves a gate open so that the agisted animal strays out and is lost (*Broadwater v Blot* (1817) Holt NP 547) or injured (*Halestrap v Gregory* [1895] 1 QB 561, where an agisted horse escaped owing to the negligence of the defendant's servant in leaving a field gate open, and when the occupiers of the adjoining land endeavoured to drive the horse back through the gate it fell over a fence and was injured: held, the injury was the natural consequence of the gate's being left open); or if the agister puts agisted animals on pasture that is dangerous because there are wells, pits or shafts on it (*Rooth v Wilson* (1817) 1 B & Ald 59). See now the duty under the Welfare of Animals Act 2006 s 9 on the keeper of an animal to ensure its welfare: PARA 831.

2 *Coldman v Hill* [1919] 1 KB 443, CA. See further **BAILMENT**.

3 *Reid v Calderwood* (1911) 45 ILT 139.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(2) AGISTMENT AND OTHER CONTRACTS/(i) Agistment/723. Rights of agister.

723. Rights of agister.

In the absence of special agreement¹, the agister has no lien upon the animals he agists, for he expends no skill upon them; he merely takes care of them and supplies them with food, and his remedy is to claim for the price of grazing². He has, however, a sufficient possessory property in them to entitle him to claim in trespass or conversion³.

The custom of agistment is notorious, and agisted animals are not in the order and disposition of the agister so as to fall within the property divisible amongst his creditors on his bankruptcy⁴.

1 *Richards v Symons* (1845) 8 QB 90.

2 *Chapman v Allen* (1631) Cro Car 271; *Jackson v Cummins* (1839) 5 M & W 342; *Judson v Etheridge* (1833) 1 Cr & M 743; *Hobby v Ruell* (1845) 1 Car & Kir 716.

3 Cf *Sutton v Buck* (1810) 2 Taunt 302 at 309 and *Rooth v Wilson* (1817) 1 B & Ald 59. See also *Worthington v Tipperary County Council* [1920] 2 IR 233, CA. In an indictment concerning the agisted animals, the property in them may be laid in the agister: *R v Woodward* (1796) 2 East PC 653. See also the Theft Act 1968 s 5(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 289.

4 See the Insolvency Act 1986 s 283 (amended by the Housing Act 1988 s 117(1)); *Re Woodward, ex p Huggins* (1886) 54 LT 683; *Re James, ex p Swansea Mercantile Bank Ltd* (1907) 24 TLR 15, CA. Where, however, the agistment agreement is a sham and the purported agister is in fact the true owner of the animals, the animals are assets in his bankruptcy: *Re Capon, ex p Trustee in Bankruptcy v R C Knight & Sons (No 4 of 1938), ex p Trustee in Bankruptcy v Woodward and Woodward (No 4 of 1938)* [1940] Ch 442, [1940] 2 All ER 135, CA. See generally **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

UPDATE

723-725 Rights of agister ... No implied guarantee of quality

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(2) AGISTMENT AND OTHER CONTRACTS/(ii) Contractual Restrictions/724. Restrictions on keeping of animals.

(ii) Contractual Restrictions

724. Restrictions on keeping of animals.

Contractual restrictions on the keeping of animals or poultry on premises let are sometimes inserted in leases or tenancy agreements and, in general, will be enforceable in accordance with the ordinary law of landlord and tenant¹. Notwithstanding any such restriction, or any restrictive provision to the like effect contained in any covenant, contract or undertaking relating to the use to be made of land, an occupier of any land may keep, otherwise than by way of trade or business, hens or rabbits in any place thereon and may erect and maintain such structures on the land as are reasonably necessary for that purpose², provided this is not done in a manner so as to be prejudicial to health or a nuisance or contrary to the provisions of any enactment³.

1 As to the obligation to observe negative covenants in leases see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 607. Where a covenant in a lease prohibits the keeping of animals, the denial of a tenancy to a visually impaired or blind person with a guide dog would amount to discrimination under the Disability Discrimination Act 1995 ss 24G, 24J(3), (4): see **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 607-608.

2 Allotments Act 1950 s 12(1).

3 Allotments Act 1950 s 12(1) proviso.

UPDATE

723-725 Rights of agister ... No implied guarantee of quality

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(3) SALE/(i) Caveat Emptor; Warranty/725. No implied guarantee of quality.

(3) SALE

(i) Caveat Emptor; Warranty

725. No implied guarantee of quality.

Domestic animals are goods and chattels, and the ordinary law as to the sale of goods applies to them¹. The purchase of an animal is essentially a purchase of an unknown quantity, for no prudence can guard against all latent defects²; and although upon the sale of any animal there is an implied condition that the vendor has the right to sell³, and although if an animal is sold for a particular purpose made known to the seller, expressly or by implication, so as to show that the buyer is relying on the seller's skill and judgment and if the seller is in the way of business of selling such animals, there is an implied condition that it is reasonably fit for that purpose⁴, yet there is no implied condition or warranty⁵ as to the quality of the animal⁶, and the rule *caveat emptor* applies⁷. It is, therefore, usual, and certainly advisable, for the buyer to protect himself by requiring an express guarantee with the animal of any quality or virtue he may require⁸.

A statement by the vendor on the sale that the animal is sound will prima facie amount merely to a warranty, but if the vendor undertakes to take the animal back if it proves not to be as stated, the statement will be converted from a warranty to a condition⁹.

1 *Edwards v Pearson* (1890) 6 TLR 220; and see **SALE OF GOODS AND SUPPLY OF SERVICES**. There being no property in wild animals while living, they cannot be the subject of sale: *Case of Swans* (1592) 7 Co Rep 15b; and see generally PARA 711. As to the sale of animals in pet shops see PARA 936.

2 Cf *Jones v Bright* (1829) 5 Bing 533 at 544 per Best CJ.

3 See the Sale of Goods Act 1979 (s 12(1) amended, and s 12(5A) added, by the Sale and Supply of Goods Act 1994 s 7, Sch 2 para 5(3)). See also **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 69.

4 Sale of Goods Act 1979 s 14(3); *Chanter v Hopkins* (1838) 8 LJ Ex 14 per Parke B.

5 As to the classification of contractual terms into conditions, warranties and 'intermediate' terms, and as to the effect of breach of a contractual term, see generally **CONTRACT; SALE OF GOODS AND SUPPLY OF SERVICES**. Cf the meaning of 'warranty' as a guarantee or representation; see PARA 726 note 1.

6 See the Sale of Goods Act 1979 s 14(1), (6) (s 14(3) amended and s 14(6) substituted by the Sale and Supply of Goods Act 1994 Sch 2 para 5(5)); and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 77.

7 As to liability for selling diseased animals see PARA 726.

8 See PARAS 731-733.

9 *Harling v Eddy* [1951] 2 KB 739, [1951] 2 All ER 212. This case must be read in the light of subsequent developments in the law which introduced the concept of 'intermediate' or 'innominate' terms of a contract; see eg *Cehave NV v Bremer Handelsgesellschaft mbH, The Hansa Nord* [1976] QB 44, [1975] 3 All ER 739, CA. It is submitted, however, that the ratio of *Harling v Eddy* [1951] 2 KB 739, [1951] 2 All ER 212, CA, remains good law. See note 5.

UPDATE

723-725 Rights of agister ... No implied guarantee of quality

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(3) SALE/(i) Caveat Emptor; Warranty/726. Liability for selling diseased animals.

726. Liability for selling diseased animals.

On the sale of an animal, whether suffering from an infectious or contagious disease or not, the maxim *caveat emptor* applies; thus where a person sent diseased pigs to market and refused to give any warranty¹, but stated that the animals must be taken 'with all faults', it was decided that he was not liable for the damage caused thereby, even if he knew that the pigs were diseased, unless he was guilty of fraud².

1 'Warranty' here and in PARAS 727-733 is generally used, as in the cases cited, in its older sense of guarantee, promise or representation, and not to denote a contractual term distinct from a condition: see *Oscar Chess Ltd v Williams* [1957] 1 All ER 325 at 327-328, [1957] 1 WLR 370 at 374, CA, per Denning LJ. Such guarantees, promises or representations may, depending on all the circumstances, become terms of the contract, and breach of such terms may entitle a party to damages or to rescission of the contract; see generally **CONTRACT**.

2 *Ward v Hobbs* (1878) 4 App Cas 13, HL. Lord Cairns LC refrained in this case from criticising the proposition of Blackburn J in *Bodger v Nicholls* (1873) 28 LT 441 at 445 that 'the defendant by taking the cow to a public market to be sold, though he does not warrant her to be sound, yet thereby furnishes evidence of a representation that, so far as his knowledge goes, the animal is not suffering from any infectious disease', beyond saying that no such representation could be implied where there was a clear statement that the buyer must take his purchase with all faults (*Ward v Hobbs* (1878) 4 App Cas 13 at 23, HL). The question is not affected by the fact that taking diseased animals to market is a breach of a statutory duty (*Ward v Hobbs* (1878) 4 App Cas 13, HL; and see reports of that case in the courts below, 2 QBD 331; 3 QBD 150). As to the remedy for breach of such statutory duty see *Gorris v Scott* (1874) LR 9 Exch 125; and **STATUTES**. See generally **MISREPRESENTATION AND FRAUD; SALE OF GOODS AND SUPPLY OF SERVICES**.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(3) SALE/(i) Caveat Emptor; Warranty/727. No liability under warranty for patent defects.

727. No liability under warranty for patent defects.

A warranty¹ is not intended to guard against defects which are obvious to the senses². It has been said that if a man guarantees that a horse has two eyes he is not liable if it has not, for the buyer could have an examination before he bought³; but it is otherwise if the eye had some defect which is congenital, or which could not be ascertained by an ordinary man⁴. Whether a defect is patent or not, or the purchaser has used ordinary care, are questions of fact. A splint may or may not cause lameness, and a warranty of soundness will be taken as meaning that a splint which was plainly visible and pointed out to the buyer was not at that time such a splint as would cause future lameness, and the warranty is broken if lameness arises from it⁵. If the buyer is not present at the time of the treaty for sale, then the warranty will cover patent defects⁶, or if the seller warrants the animal with the intention of preventing the buyer examining it and so discovering a patent defect, or uses any other artifice to conceal such a defect, then also the warranty will cover it⁷. If a person purchases a horse, knowing it to be blind, he cannot sue the seller on a general warranty of soundness⁸.

1 See PARA 726 note 1.

2 Cf *Anon* (1471) YB 11 Edw 4, fo 6, pl 10 per Fairfax J.

3 *Anon* (1471) YB 11 Edw 4, fo 6, pl 10 per Brian J. 'To warrant a thing that may be perceived by sight is not good': *Baily v Merrell* (1616) 3 Bulst 94 per Haughton J.

4 *Holliday v Morgan* (1858) 1 E & E 1; *Southerne v Howe* (1617) 2 Roll Rep 5.

5 *Margetson v Wright* (1831) 7 Bing 603; on rehearing (1832) 8 Bing 454; *Weston v Potter* (1846) 8 LTOS 137; *Smith v O'Bryan* (1864) 11 LT 346.

6 *Drewe v E* (1412) YB 13 Hen 4, fol 1 B.

7 *Dorrington v Edwards* (1621) 2 Roll Rep 188; *Kenner v Harding* (1877) 85 Ill 264 (US); 28 Am R 615.

8 *Margetson v Wright* (1831) 7 Bing 603.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(3) SALE/(i) Caveat Emptor; Warranty/728. Warranty given by agent.

728. Warranty given by agent.

An agent to sell is not always an agent to warrant¹, but when a groom or servant is sent to sell a horse, slight evidence is sufficient to prove an agency to warrant². A distinction has generally been made between the servant of a private seller and that of a horse-dealer³; if the servant or agent of a private individual takes upon himself to warrant, in the absence of authority to do so, the master is not bound, unless the sale be made at a fair or other public market, in which case the servant or agent is more in the position of the servant of a horse-dealer, and has an implied authority to warrant⁴; if the servant or assistant of a horse-dealer gives a warranty the principal is bound, even though the servant was expressly forbidden to warrant⁵.

Any person dealing with an agent or assistant of a horse-dealer has a right to assume an authority to warrant, and evidence of a custom amongst horse-dealers not to warrant is inadmissible⁶. A horse-dealer is not bound by the action of his servant who is sent merely to deliver a horse already sold, and who signs a receipt containing a warranty⁷, or who warrants such an incidental matter as that a horse may safely be placed with others in a stable, because the warranty is not given in the course of the transaction of sale⁸.

On the other hand, a buyer who sends a servant to accept a horse with a warranty is not bound if the servant accepts it without a warranty, and may return the horse⁹.

A minor, not generally being able to contract except for necessities, is not liable for breach of warranty of a horse¹⁰.

1 See PARA 726 note 1.

2 *Miller v Lawton* (1864) 15 CBNS 834. A warranty by one of two horse-dealing partners binds the other, even though between them there is an agreement not to warrant: *Sandilands v Marsh* (1819) 2 B & Ald 673.

3 *Brady v Todd* (1861) 9 CBNS 592; *Bank of Scotland v Watson* (1813) 1 Dow 40; cf *Helyear v Hawke* (1803) 5 Esp 72.

4 *Alexander v Gibson* (1811) 2 Camp 555; *Brooks v Hassall* (1883) 49 LT 569.

5 *Howard v Sheward* (1866) LR 2 CP 148; *Pickering v Busk* (1812) 15 East 38. Cf *Coleman v Riches* (1855) 24 LJCP 125. Generally, as to the authority of an agent, see **AGENCY** vol 1 (2008) PARA 29 et seq.

6 *Howard v Sheward* (1866) LR 2 CP 148.

7 *Woodin v Burford* (1834) 2 Cr & M 391. Cf *Strode v Dyson* (1804) 1 Smith KB 400; and see *Cornfoot v Fowke* (1839) 9 LJ Ex 297.

8 *Baldry v Bates* (1885) 1 TLR 558.

9 *Jordon v Norton* (1838) 4 M & W 155.

10 See **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 12 et seq.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(3) SALE/(ii) Express Warranty/729. Nature and extent of express warranty.

(ii) Express Warranty

729. Nature and extent of express warranty.

By a warranty¹ the seller undertakes absolutely that the animal possesses the virtues attributed to it in the warranty, and is at the time of the sale free from the defects warranted against, whether they are known to him or not². Special words may, however, limit the warranty to defects within the seller's knowledge³.

It is not uncommon to insert the warranty given in the receipt for the price; and such insertion was held not to make the receipt liable to stamp duty as an agreement⁴. No particular form of words is necessary to constitute a warranty⁵. Any statement of fact made at the time of the sale and before it is completed, and intended to be a warranty, is a warranty in law⁶. The questions of the intention of the statement, and whether the statement was part of the contract of sale, are questions of fact⁷. Thus, a statement 'You may depend upon it that the horse is perfectly quiet and free from vice' is a sufficient warranty, although the word 'warrant' is not used⁸.

If the word 'warrant' is used, the warranty extends only to so much as is governed by that word⁹. If the word 'warranted' is used alone, it is taken to refer to soundness only, and not to a preceding description¹⁰. The warranty may be limited in any way¹¹, but if a horse is warranted 'sound and quiet in all respects', that is general, and includes being quiet in harness¹². A horse is most commonly warranted as to soundness and freedom from vice, but any quality may be warranted¹³.

The fact that a sound price, that is a good or fair price for a sound animal, is given for the animal does not amount to a warranty that the animal is sound¹⁴.

Distinct statements of fact printed in an auctioneer's catalogue, if such as to confer additional value on the animal sold, amount to warranties¹⁵. They are not generally difficult to interpret, because they are usually printed and explained in the conditions of sale¹⁶. An oral statement at the sale by a vendor, even if it amounts merely to a warranty, may override the written terms of sale¹⁷.

1 See PARA 726 note 1.

2 Cf *Stuart v Wilkins* (1778) 1 Doug KB 18; *Williamson v Allison* (1802) 2 East 446.

3 *Wood v Smith* (1829) 5 Man & Ry KB 124. Cf *Dunlop v Waugh* (1792) Peake 123; *Pinder v Button* (1862) 7 LT 269.

4 *Skrine v Elmore* (1810) 2 Camp 407. As to stamp duty see **STAMP DUTIES AND STAMP DUTY RESERVE TAX**.

5 *Gee v Lucas* (1867) 16 LT 357.

6 *Pasley v Freeman* (1789) 3 Term Rep 51; *Hopkins v Tanqueray* (1854) 15 CB 130. If made after the sale there must be a new consideration to support the warranty: *Roscorla v Thomas* (1842) 3 QB 234. Cf *Cave v Coleman* (1828) 3 Man & Ry KB 2.

7 *Salmon v Ward* (1825) 2 C & P 211; *Hopkins v Tanqueray* (1854) 15 CB 130; *Wood v Smith* (1829) 5 Man & Ry KB 124; *Percival v Oldacre* (1865) 18 CBNS 398; *Schawel v Reade* (1912) 46 ILT 281, HL. A statement that a cow has been served or is in calf has been held to be a description and not a warranty: *Thomas v Griffiths* (1956) 167 Estates Gazette 448, CA.

8 *Cave v Coleman* (1828) 3 Man & Ry KB 2.

9 Thus, 'a black horse rising five years, quiet to ride and drive and warranted sound' is not a warranty that the horse is quiet to drive and ride: *Anthony v Halstead* (1877) 37 LT 433; *Budd v Fairmaner* (1831) 8 Bing 48.

10 Eg where a horse was described as 'a black gelding, five years old, has been constantly driven in the plough, warranted': *Richardson v Brown* (1823) 1 Bing 344.

11 *Jones v Cowley* (1825) 4 B & C 445; *Hemming v Parry* (1834) 6 C & P 580.

12 *Smith v Parsons* (1837) 8 C & P 199.

13 Eg its age (*Buchanan v Parnshaw* (1788) 2 Term Rep 745), or that it has been hunted with a certain pack (*Head v Tattersall* (1871) LR 7 Exch 7), or that a mare is in foal to a certain horse (*Gee v Lucas* (1867) 16 LT 357).

14 *Parkinson v Lee* (1802) 2 East 314.

15 *Gee v Lucas* (1867) 16 LT 357. As to sales by auction generally see **AUCTION**.

16 A sale 'with all faults' and without a warranty relieves the seller from all liability in respect of any disease or defect: *Ward v Hobbs* (1878) 4 App Cas 13, HL.

17 *Couchman v Hill* [1947] KB 554, [1947] 1 All ER 103, CA; *Harling v Eddy* [1951] 2 KB 739, [1951] 2 All ER 212, CA, following *Couchman v Hill* [1947] KB 554, [1947] 1 All ER 103, CA, and distinguishing *Hopkins v Tanqueray* (1854) 15 CB 130.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(3) SALE/(ii) Express Warranty/730. What amounts to unsoundness.

730. What amounts to unsoundness.

If at the time of sale a horse has any disease or defect which actually diminishes, or in its ordinary progress will diminish, its natural usefulness, it is not sound¹. A congenital defect, such as convexity of the cornea of the eye, which causes short-sightedness and induces the habit of shying, is unsoundness². The slightness of the disease, or the ease with which it is cured, may affect the amount of damages, but does not affect the principle, unless it is of so trifling a character as not to amount to unsoundness at all³. A cough⁴, and temporary lameness⁵, have, therefore, both been held to be unsoundness. The question of soundness or unsoundness is one of fact⁶.

1 See *Coates v Stephens* (1838) 2 Mood & R 157. Cf *Kiddell v Burnard* (1842) 9 M & W 668.

2 *Holliday v Morgan* (1858) 1 E & E 1.

3 Cf *Kiddell v Burnard* (1842) 9 M & W 668.

4 *Coates v Stephens* (1838) 2 Mood & R 157; *Shillitoe v Claridge* (1816) 2 Chit 425.

5 *Elton v Brogden* (1815) 4 Camp 281.

6 *Lewis v Peake* (1816) 7 Taunt 153. 'Vice' means either a defect in the temper of the horse which makes it dangerous or diminishes its usefulness, or a bad habit which is injurious to its health: *Scholefield v Robb* (1839) 2 Mood & R 210.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(3) SALE/(ii) Express Warranty/731. Warranty relating to future.

731. Warranty relating to future.

Unless otherwise expressly stated, a warranty¹ only relates to facts as they are at the time of sale². It may, however, expressly relate to the future, as where the seller undertakes to deliver horses sound at the end of a fortnight³; but 'warranted sound for one month' has been held to mean not that the horse was warranted to continue sound for a month, but that the duration of the warranty was limited to one month, and that complaint of unsoundness must be made within one month of sale⁴.

1 See PARA 726 note 1.

2 *Liddard v Kain* (1824) 2 Bing 183; and see *Anon* (1471) YB 11 Edw 4, fo 6, pl 10 per Choke J.

3 *Liddard v Kain* (1824) 2 Bing 183; *Eden v Parkison* (1781) 2 Doug KB 732; *Kyle v Sim* 1925 SC 425.

4 *Chapman v Gwyther* (1866) LR 1 QB 463. Cf *Buchanan v Parnshaw* (1788) 2 Term Rep 745.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(3) SALE/(iii) Breach of Warranty/732. Notice to seller of breach.

(iii) Breach of Warranty

732. Notice to seller of breach.

The buyer should give notice to the seller as soon as possible of any alleged breach of warranty¹, although this is not absolutely necessary². If there is no time limit in the contract within which complaint must be made, the buyer is not prejudiced by anything done by him before he discovers the defects³.

1 See PARA 726 note 1.

2 See *Fielder v Starkin* (1788) 1 Hy Bl 17; *Patteshall v Tranter* (1835) 3 Ad & El 103.

3 *Best v Osborn* (1825) 2 C & P 74.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(3) SALE/(iii) Breach of Warranty/733. Return of animal.

733. Return of animal.

If the buyer has reserved a right to return the animal within a specified time, he may return it at any time within that period, and is not bound to do so the moment he discovers the defects; so that if injury happens to the animal while in his possession, and without his fault, he is not liable for it and may still return the animal within the period¹; and if the animal under such circumstances becomes injured so that it cannot be returned within the specified time, the non-return by the buyer within the period stipulated will not bar a claim for breach of warranty².

If the animal is sold upon a condition that it may be returned within a specified period in case of unsuitability or for any other reason, and it dies within the specified period without any default of the buyer, the loss falls on the seller, there being no completed sale in the proper sense until the buyer has given approval expressly or by implication from his keeping the animal beyond that period³.

It has been a usual stipulation in warranties or conditions, especially at sales by auction, that complaint be made or the animal returned within a specified time; if this stipulation is not complied with no action can be brought⁴. A stipulation that a warranty of soundness is to remain in force until noon of the day after the sale, when it will be deemed to have been performed and the seller's responsibility will terminate, unless in the meantime a notice to the contrary and a certificate of any alleged unsoundness be given, is reasonable⁵, and, if brought to the buyer's notice, is binding upon him⁶. However, the seller is by statute bound on request to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract⁷.

1 *Head v Tattersall* (1871) LR 7 Exch 7.

2 *Chapman v Withers* (1888) 20 QBD 824; and see also *Taylor v Caldwell* (1863) 3 B & S 826.

3 *Elphick v Barnes* (1880) 5 CPD 321.

4 *Hinchcliffe v Barwick* (1880) 5 ExD 177, CA; *Smart v Hyde* (1841) 8 M & W 723; *Menard v Aldridge* (1801) 3 Esp 271; *Head v Tattersall* (1871) LR 7 Exch 7.

5 *Smart v Hyde* (1841) 8 M & W 723.

6 *Bywater v Richardson* (1834) 1 Ad & El 508.

7 See the Sale of Goods Act 1979 s 34; and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 196. As to the return of an animal under a distance selling contract see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 673 et seq.

UPDATE

733 Return of animal

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(3) SALE/(iv) Misrepresentation and Fraud/734. Effect of innocent misrepresentation.

(iv) Misrepresentation and Fraud

734. Effect of innocent misrepresentation.

Where a misrepresentation¹ innocently made has induced a person to enter into a contract in relation to an animal, he may be entitled to rescind it, the court having a discretion to order rescission or damages². Further, a person guilty of an innocent misrepresentation is liable in damages for any loss resulting if he would have been so liable had he acted fraudulently, unless he proves that he had reasonable grounds for believing, and did believe, up to the time of the making of the contract, that the facts represented were true³.

1 As to misrepresentation generally see **MISREPRESENTATION AND FRAUD**.

2 See the Misrepresentation Act 1967 s 2(2).

3 Misrepresentation Act 1967 s 2(1).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(3) SALE/(iv) Misrepresentation and Fraud/735. Effect of fraud.

735. Effect of fraud.

Fraud¹ renders a contract voidable at the option of the party defrauded. On discovery of the fraud the buyer may either return the animal and claim for return of the price paid², or keep the animal and claim damages. This is so even where the fraud concerns something outside an express warranty; thus proof of fraud at the time of the sale, for example, as to a horse's age, would vitiate the sale although the warranty was only as to soundness and freedom from vice³.

1 As to fraud generally see **MISREPRESENTATION AND FRAUD**.

2 Cf *Kennedy v Panama, etc, Mail Co* (1867) LR 2 QB 580.

3 *Steward v Coesvelt* (1823) 1 C & P 23. As to criminal proceedings see *R v Sanders* [1919] 1 KB 550, CCA. So far as animal dealers are concerned see also the Trade Descriptions Act 1968 ss 1, 2; and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 471 et seq.

UPDATE

735 Effect of fraud

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(4) THEFT/736. Domestic animals as subjects of theft.

(4) THEFT

736. Domestic animals as subjects of theft.

At common law, domestic and tame animals, such as horses, cattle, oxen, sheep, poultry, peacocks, and all animals which are fit for human food, and their young and eggs, were the subject of larceny¹. Dogs of all kinds, cats and animals of base nature were exceptions².

By statute, however, all animals which have value and are the property of any person can be the subject of theft³, which is punishable on indictment by imprisonment for a term not exceeding seven years⁴. Domestic animals, as property generally, are to be regarded as belonging to any person having possession or control of them or having any proprietary right or interest in them, other than a mere equitable interest arising from an agreement to transfer or to grant an interest⁵.

1 1 Hawk PC (8th Edn) 149-150; 1 Hale PC 510.

2 3 Co Inst 109; 1 Hale PC 511; *Case of Swans* (1592) 7 Co Rep 15b, citing YB 12 Hen 8, fo 3 and 18 Hen 8, fo 2, where it is said that bloodhounds or mastiffs are of 'so base a nature that no felony can be committed of them and no man shall lose life or member for them'. The skin of a dog when dead was always the subject of larceny: see *R v Halloway* (1823) 1 C & P 127 note (b).

3 See the Theft Act 1968 ss 1-6. It follows that they may also be the subject of the offence of handling stolen goods (ss 22(1), 34(2)(b)), punishable by imprisonment not exceeding 14 years (s 22(2)). As to theft and other offences of dishonesty generally see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 282 et seq. As to the offence in a dealer in rags and old clothes of selling or delivering any animal, fish, bird or other living thing to a person under the age of 14 see the Public Health (Control of Disease) Act 1984 s 55; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 892.

4 Theft Act 1968 s 7 (amended by the Criminal Justice Act 1991 s 26(1)).

5 See the Theft Act 1968 s 5(1).

UPDATE

736-740 Domestic animals as subjects of theft ... Killing or injuring animals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

736 Domestic animals as subjects of theft

NOTES--Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(4) THEFT/737. Wild animals as subjects of theft.

737. Wild animals as subjects of theft.

Although a wild animal, whether tamed or untamed, is to be regarded as property by statute, neither it nor its carcase can be the subject of theft if the animal is not tamed or ordinarily kept in captivity¹ unless either it has been reduced into possession by or on behalf of someone other than the taker, and possession of it has not since been lost or abandoned, or it is in course of being reduced into possession by another person². Thus, a person who kills and carries away a wild animal is not guilty of theft even if he temporarily abandons possession of it.

¹ At common law living wild animals were not the subject of larceny unless reclaimed and fit for human food; nor were those animals *ferae naturae* kept merely for pleasure the subject of larceny: 2 East PC 607, 614. The following authorities under the law obtaining before the Theft Act 1968 may still be useful in considering the questions of taming and keeping in captivity: *Case of Swans* (1592) 7 Co Rep 15b; *R v Cory* (1864) 10 Cox CC 23 (young pheasants hatched under hen in field); *R v Shickle* (1868) LR 1 CCR 158 (young pheasants and partridges hatched under hen in coop); *R v Brooks* (1829) 4 C & P 131; *R v Cheafor* (1851) 21 LJMC 43; and *Hamps v Darby* [1948] 2 KB 311, [1948] 2 All ER 474, CA (tame pigeons in dovecote); 1 Hawk PC (8th Edn) 149; 2 BI Com (14th Edn) 394; 1 Hale PC 511 (reclaimed hawks or falcons).

² Theft Act 1968 s 4(4). As to property in wild animals generally see PARA 711; as to theft and other offences of dishonesty see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 282 et seq.

UPDATE

736-740 Domestic animals as subjects of theft ... Killing or injuring animals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(4) THEFT/738. Advertising rewards for return of animals.

738. Advertising rewards for return of animals.

To advertise publicly a reward for the return of any animal stolen or lost, using any words to the effect that no questions will be asked, or that the person producing the animal will be safe from apprehension or inquiry, or that any money paid for its purchase or advanced by way of loan on it will be repaid, is an offence for which the advertiser, printer and publisher are liable on summary conviction to a fine not exceeding level 3 on the standard scale¹.

¹ See the Theft Act 1968 ss 23, 34(2)(b) (s 23 amended by virtue of the Criminal Justice Act 1982 ss 38, 46).

'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37: see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164; and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 144.

UPDATE

736-740 Domestic animals as subjects of theft ... Killing or injuring animals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(4) THEFT/739. Offences triable summarily.

739. Offences triable summarily.

Those offences under the Theft Act 1968 already referred to which are triable on indictment¹ may be dealt with summarily if the accused, when informed of his right to trial by jury, so consents², in which event the maximum penalty is imprisonment for six months or a fine not exceeding the prescribed sum³ or both⁴.

1 See PARA 736.

2 Magistrates' Courts Act 1980 s 17, Sch 1 para 28.

3 'Prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2) (c)); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 141.

4 See the Magistrates' Courts Act 1980 s 32; and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 6.

UPDATE

736-740 Domestic animals as subjects of theft ... Killing or injuring animals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(5) INJURY TO ANIMALS; TRESPASS AND CONVERSION/740. Killing or injuring animals.

(5) INJURY TO ANIMALS; TRESPASS AND CONVERSION

740. Killing or injuring animals.

Domestic animals are 'property' within the definition in the Criminal Damage Act 1971, as are wild animals which have been tamed or are ordinarily kept in captivity¹, and other wild animals or their carcasses if, but only if, they have been reduced into possession which has not been lost or abandoned or are in the course of being reduced into possession².

A person who without lawful excuse³ destroys or damages any animal as above belonging to another, either intending to destroy or damage the property of another, or being reckless as to whether the property of another will be destroyed or damaged, commits an offence⁴ punishable on indictment by imprisonment for a term not exceeding ten years⁵. The offence is triable summarily with the defendant's consent, in which case the maximum penalty is six months' imprisonment or a fine of the prescribed sum⁶ or both⁷.

The necessary mental element in the offence is accordingly that of intention or recklessness⁸. It should be noted that the offence is limited to destroying or damaging animals belonging to other persons, but destroying or damaging one's own animals may amount to an offence under the Protection of Animals Act 1911⁹.

For the purposes of the offence an animal is to be taken as belonging to someone if that person (1) has the custody or control of it; (2) has any proprietary right or interest in it, not being an equitable interest arising only from an agreement to transfer or grant an interest; or (3) has a charge on it¹⁰.

1 As to animals in captivity see PARA 737 note 1.

2 Criminal Damage Act 1971 s 10(1)(a). For offences of damage to property generally see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 333 et seq.

3 See PARA 742.

4 Criminal Damage Act 1971 s 1(1). It would not be necessary to prove that the injury was inflicted with an instrument: *R v Bullock* (1868) 11 Cox CC 125. It is an additional offence to have anything in one's custody or under one's control intending without lawful excuse to use it to destroy or damage property: see the Criminal Damage Act 1971 s 3; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 338.

5 Criminal Damage Act 1971 s 4(2). If the offence is committed with the aggravating factor of intention to endanger life or recklessness in that respect, whether the animal belongs to the offender or someone else, it carries a maximum penalty of life imprisonment: ss 1(2), 4(1).

6 As to the prescribed sum see PARA 739 note 3.

7 Magistrates' Courts Act 1980 ss 17, 32, Sch 1 para 29; and see PARA 739. This does not apply to a conviction under the Criminal Damage Act 1971 s 1(2).

8 For the purposes of the Criminal Damage Act 1971 a person is reckless if he does an act which in fact involves a serious risk, obvious to an ordinary prudent individual, of causing injury or damage and either (1) he fails to give any thought to the possibility of there being any such risk; or (2) having recognised that there is some risk involved he nevertheless goes on to take that risk: *Metropolitan Police Comr v Caldwell* [1982] AC 341 at 354, sub nom *R v Caldwell* [1981] 1 All ER 961 at 967, HL, per Lord Diplock.

9 See PARA 817 et seq; and see *Armstrong v Mitchell* (1903) 88 LT 870; and *Barnard v Evans* [1925] 2 KB 794, DC. As to the protection of wild birds and their nests see PARA 994 et seq.

10 Criminal Damage Act 1971 s 10(2).

UPDATE

736-740 Domestic animals as subjects of theft ... Killing or injuring animals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(5) INJURY TO ANIMALS; TRESPASS AND CONVERSION/741. Threats to kill or injure animals.

741. Threats to kill or injure animals.

Any person who without lawful excuse¹ makes to another a threat, intending that the other would fear it would be carried out, to destroy or damage any animal² belonging to that other person (or a third person) commits an offence³ punishable on indictment by imprisonment for a term not exceeding ten years⁴ or, if tried summarily with the defendant's consent, by imprisonment for a term not exceeding six months or a fine not exceeding the prescribed sum or both⁵.

1 See PARA 742.

2 As to the animals included see PARA 740 text to notes 1-2.

3 Criminal Damage Act 1971 s 2(a).

4 Criminal Damage Act 1971 s 4(2).

5 Magistrates' Courts Act 1980 ss 17, 32, Sch 1 para 29; and see PARA 739. As to the prescribed sum see PARA 739 note 3.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(5) INJURY TO ANIMALS; TRESPASS AND CONVERSION/742. Lawful excuse.

742. Lawful excuse.

The Criminal Damage Act 1971 provides specific excuses for what would otherwise be offences under the Act¹. Thus, a defendant is excused if at the time of the alleged offence he believed² that the person whom he believed³ to be entitled to consent to the destruction of or damage to the animal in question had so consented or would have so consented if he had known of it and its circumstances⁴; or if the defendant acted as he did in order to protect property belonging to himself or another or a right or interest, including sporting rights⁵, in it which he, or that other person, either possessed or he believed⁶ possessed, and at the time of the offence he also believed (1) that the property, right or interest was in immediate need of protection; and (2) that the means of protection adopted or proposed were or would be reasonable having regard to all the circumstances⁷.

1 See the Criminal Damage Act 1971 s 5. These excuses are in addition to any recognised defences: s 5(5). An honest, even if unreasonable, belief that the animal belonged to the defendant would be a good defence: see *R v Smith* [1974] QB 354, [1974] 1 All ER 632. Belief that the animal was wild and not reduced into possession (see PARA 711) would not be a good defence: *Horton v Gwynne* [1921] 2 KB 661, DC; *Cotterill v Penn* [1936] 1 KB 53, DC. If the act is done in self-defence the defendant is entitled to be acquitted: *Hanway v Boulton* (1830) 4 C & P 350.

2 It is immaterial whether a belief is justified or not, provided that it is honestly held: Criminal Damage Act 1971 s 5(3).

3 See note 2.

4 Criminal Damage Act 1971 s 5(2)(a).

5 'Right or interest in property' includes any right or privilege in or over land, whether created by grant, licence or otherwise: Criminal Damage Act 1971 s 5(4). As to sporting rights generally see PARA 763 et seq.

6 See note 2.

7 Criminal Damage Act 1971 s 5(2)(b). The court must first decide what the defendant believed, then decide as a matter of law whether the defendant's actions on the facts believed by him could constitute protection of property: *R v Hill, R v Hall* (1989) 89 Cr App Rep 74, CA. The defence was held inapplicable in a case involving the destruction of traps set for badgers by officers of the Department for the Environment, Food and Rural Affairs, because the badgers could not be said to be property of the Department at the times when the traps were set: see *Cresswell v DPP* [2006] EWHC 3379 (Admin), sub nom *Currie v DPP* [2006] All ER (D) 429 (Nov).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(5) INJURY TO ANIMALS; TRESPASS AND CONVERSION/743. Compensation for killing or damaging animal.

743. Compensation for killing or damaging animal.

The general power of a court by or before which a person is convicted of an offence to make a compensation order¹ applies in relation to the offence of destroying or damaging property, including an animal². Where the person is convicted of such an offence, the court, instead of or in addition to dealing with him in any other way, may, on application or otherwise³, make a compensation order requiring him to pay compensation for any loss or damage resulting from that offence or from any other offence which is taken into account by the court in determining sentence⁴. Compensation must be of such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the accused or the prosecutor⁵. The maximum amount which a magistrates' court may order by way of compensation is £5,000 for each offence of which the offender is convicted⁶.

1 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 130; see generally **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 375 et seq.

2 le under the Criminal Damage Act 1971 s 1; see PARA 740.

3 It should be noted that the court may act of its own motion.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 130(1).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 130(4).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 131(1).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(5) INJURY TO ANIMALS; TRESPASS AND CONVERSION/744. Civil liability for shooting domestic animals.

744. Civil liability for shooting domestic animals.

The shooting of a tame or domestic animal renders the shooter liable to a civil claim for its value unless he can show that he had no other means of protecting his property¹. Where no such justification exists, shooting at and injuring an animal may amount to an offence of causing unnecessary suffering².

¹ *Cresswell v Sirl* [1948] 1 KB 241, [1947] 2 All ER 730, CA; *Hamps v Darby* [1948] 2 KB 311, [1948] 2 All ER 474, CA. As to shooting dogs see PARA 782. A farmer who shoots a dog to protect his sheep is unlikely to be liable but a farmer who shoots a dog to protect his introduced ducks in a pond is liable.

² See under the Animal Welfare Act 2006 s 4(1): see PARA 826. See *Barnard v Evans* [1925] 2 KB 794, DC; *Isted v Crown Prosecution Service* (1997) 162 JP 513, DC.

UPDATE

744 Civil liability for shooting domestic animals

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(5) INJURY TO ANIMALS; TRESPASS AND CONVERSION/745. Killing or taking animals in course of trespass.

745. Killing or taking animals in course of trespass.

To go on to the land of another and there take or kill any wild animal not reduced into the possession of that other person, although not theft¹, is a trespass giving rise to a claim². If the animal taken or killed, or the objective of the trespass, was game, the trespasser is liable to statutory penalties and the occupier of the land may prosecute him³.

1 As to theft of wild animals see PARA 737. As to restrictions on the possession of firearms see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 630 et seq.

2 See generally **TORT** vol 97 (2010) PARA 562 et seq.

3 See PARA 763 et seq.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/2. ANIMALS AS THE SUBJECT OF PROPERTY/(5) INJURY TO ANIMALS; TRESPASS AND CONVERSION/746. Mitigating nuisance by doves, pigeons etc.

746. Mitigating nuisance by doves, pigeons etc.

Subject to certain safeguards¹, a local authority may seize, destroy, sell or otherwise dispose of² any house doves or pigeons which in its belief have no owner³ and which constitute a nuisance or annoyance or are causing damage⁴; an authority may also take steps for the purpose of abating or mitigating any nuisance, annoyance or damage caused by starlings or sparrows⁵.

1 The authority must act humanely and must not contravene the provisions of the Wildlife and Countryside Act 1981 Pt I (ss 1-27): Public Health Act 1961 s 74(3), (4) (s 47(4) amended by the Wildlife and Countryside Act 1981 ss 72(6), 74(3)).

2 This power is not negated by the Theft Act 1968 s 4(4) (wild animals as the subject of property): Public Health Act 1961 s 74(2). The Theft Act 1968 s 4(4) replaces the Larceny Act 1861 s 23, which is referred to in the Public Health Act 1961 s 74(2).

3 Public Health Act 1961 s 74(1), (2).

4 Public Health Act 1961 s 74(1).

5 Public Health Act 1961 s 74(1).

UPDATE

746 Mitigating nuisance by doves, pigeons etc

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/3. LIABILITY OF OWNERS AND KEEPERS OF ANIMALS/ (1) INJURIES CAUSED BY ANIMALS/747. Strict liability for damage.

3. LIABILITY OF OWNERS AND KEEPERS OF ANIMALS

(1) INJURIES CAUSED BY ANIMALS

747. Strict liability for damage.

Where any damage¹ is caused by an animal belonging to a dangerous species², any person who is its keeper³ is strictly liable for the damage, subject to certain exceptions⁴.

A dangerous species is one which is not commonly domesticated in the British Islands, and whose fully-grown animals normally have such characteristics that they are likely, unless restrained, to cause severe damage, or that any damage they may cause is likely to be severe⁵.

A person is a keeper of an animal if he either owns it or has it in his possession, or if he is the head of a household of which a member under the age of 16 owns the animal or has it in his possession, and if at any time such ownership or possession ceases, then the person who immediately before that time qualified as being the animal's keeper continues as such until replaced by another person⁶. A person does not, however, become a keeper of an animal for this purpose merely by reason of his taking it and keeping it in his possession to prevent its causing damage or to restore it to its owner⁷.

1 'Damage' includes the death of, or injury to, any person, including any disease and any impairment of physical or mental condition: Animals Act 1971 s 11.

2 'Species' includes sub-species and variety: Animals Act 1971 s 11.

3 More than one person may qualify as an animal's keeper; thus both the rider and the owner of a horse can be keepers of the horse, and one keeper of an animal is in law capable of suing another: *Flack v Hudson* [2001] QB 698, [2001] 2 WLR 982, [2000] All ER (D) 1701, CA. See also text and notes 5-7. A child could be sued for damage done by a dangerous animal kept by him (see *North v Wood* [1914] 1 KB 629), but it is doubtful whether this is still the case in the light of the Animals Act 1971 ss 1(1)(a), 6(3) (see text and notes 4-5). As to capacity of children generally see **CHILDREN AND YOUNG PERSONS**.

4 Animals Act 1971 s 2(1). This provision replaces the former common law rules based on the principle of *ferae naturae*: s 1(1)(a). For exceptions from liability see PARA 749.

5 Animals Act 1971 s 6(1), (2). Whether an animal is domesticated or not appears to be a question of law (*McQuaker v Goddard* [1940] 1 KB 687, [1940] 1 All ER 471, CA), but it is submitted that the Act now draws a distinction between 'domesticated' (see *McQuaker v Goddard* [1940] 1 KB 687, [1940] 1 All ER 471, CA) and 'domesticated in these islands'. Clearly an animal may be dangerous under the Act because of its sheer size or its unpredictability (as by becoming frightened and stampeding), regardless of any sort of viciousness in it: cf *Behrens v Bertram Mills Circus Ltd* [1957] 2 QB 1, [1957] 1 All ER 583. Bees appear to be domesticated: see *O'Gorman v O'Gorman* [1903] 2 IR 573 (negligence expressly found). 'British Islands' means the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland; the United Kingdom means Great Britain (ie England, Scotland and Wales) and Northern Ireland: see the Interpretation Act 1978 ss 5, 22, Sch 1.

6 Animals Act 1971 s 6(3). This follows the common law rule that responsibility for an animal's acts depended upon ownership or possession and control: see *M'Kone v Wood* (1831) 5 C & P 1; *Knott v LCC* [1934] 1 KB 126, CA. However, it is submitted that *Smith v Great Eastern Rly Co* (1866) LR 2 CP 4 (stray dog on premises but nothing done to encourage it or exercise control over it: no liability) would still be good law. See also *Flack v Hudson* [2001] QB 698, [2001] 2 WLR 982, [2000] All ER (D) 1701, CA; and note 3.

7 Animals Act 1971 s 6(4).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/3. LIABILITY OF OWNERS AND KEEPERS OF ANIMALS/ (1) INJURIES CAUSED BY ANIMALS/748. Necessity for knowledge.

748. Necessity for knowledge.

Where damage¹ is caused by an animal which does not belong to a dangerous species² its keeper³ is strictly liable for the damage, subject to certain exceptions⁴, if:

- 1 (1) the damage is of a kind which the animal, unless restrained, was likely to cause or which, if caused by the animal, was likely to be severe⁵; and
- 2 (2) such likelihood was due to characteristics of the animal not normally found in animals of the same species⁶ or, if so found, only at particular times or in particular circumstances⁷; and
- 3 (3) those characteristics were known to that keeper, or were at any time known to a person who at that time had charge of the animal as that keeper's servant or, if the keeper is the head of a household, if they were known to any other member of the household under the age of 16 who is also deemed to be a keeper of the animal⁸.

Thus liability for a harmless animal's acts only arises if it has an abnormal dangerous characteristic, which must be known to its keeper, and in the absence of these circumstances liability will depend upon the ordinary law of negligence⁹. The fact that an animal of a non-dangerous species such as a dog is of a particular breed is no justification for excepting it from the ordinary category of dogs¹⁰. The tendency of untended sheep to endanger vehicles on a highway would not amount to a dangerous characteristic¹¹.

1 As to the meaning of 'damage' see PARA 747 note 1.

2 As to the meaning of 'dangerous species' see PARA 747.

3 As to the meaning of 'keeper' see PARA 747.

4 Animals Act 1971 s 2(2). As to the exceptions see PARA 749.

5 Animals Act 1971 s 2(2)(a). See *Cummings v Grainger* [1977] QB 397, [1977] 1 All ER 104, CA. It is not necessary to show that an animal has abnormal characteristics which render it likely that any damage caused by that animal could be severe for the purposes of this provision: *Curtis v Betts* [1990] 1 All ER 769, [1990] 1 WLR 459, CA. See also *Smith v Ainger* (1990) Times, 5 June, CA; and see *Elliott v Townfoot Stables* [2003] All ER (D) 425 (Dec) (child thrown from pony; held damage was a mere possibility but it was not reasonably to be expected and the defendant was not liable).

6 As to the meaning of 'species' see PARA 747 note 2.

7 Animals Act 1971 s 2(2)(b). The words 'characteristics . . . not normally found in animals of the same species' are to be given their ordinary and natural meaning: *Wallace v Newton* [1982] 2 All ER 106, [1982] 1 WLR 375.

An animal whose behaviour is not normal for animals of that species will nevertheless fall within head (2) in the text if its behaviour is normal for the species in the particular circumstances: *Mirvahedy v Henley* [2003] UKHL 16, [2003] 2 AC 491, [2003] 2 All ER 401, approving *Cummings v Grainger* [1977] QB 397, [1977] 1 All ER 104, CA, and *Curtis v Betts* [1990] 1 All ER 769, [1990] 1 WLR 459, CA (tendency of dog to defend its territory), and not following *Gloster v Chief Constable of Greater Manchester Police* [2000] All ER (D) 389, CA ('characteristics' are to be distinguished from 'training'; thus a police dog's training does not satisfy the requirements of head (2) in the text). See also *Welsh v Stokes and another* [2007] EWCA Civ 796, [2007] All ER (D) 440 (Jul); see further *Howard v Bergin, O'Connor & Co* [1925] 2 IR 110 (tendency of bullocks to become wild on unloading from the railway); *Barnes v Lucille Ltd* (1906) 96 LT 680 (bitch only fierce when with pups); *Flack v Hudson* [2001] QB 698, [2001] 2 WLR 982, [2000] All ER (D) 1701, CA (tendency of horse to bolt near agricultural machinery).

Comparison should be made with the appropriate breed characteristics, since 'species' is defined as including sub-species and variety in the Animals Act 1971 s 11: *Hunt v Wallis* [1994] PIQR P128, (1991) Times, 10 May. Cf *Carryfast Ltd v Hack* [1981] RTR 464 (negligence not proved against the rider of a frisky horse).

There must be a causal link between the animal's characteristics and the damage: *Jaundrill v Gillett* (1996) Times, 30 January, CA, distinguished on its facts by the Court of Appeal in *Mirvahedy v Henley* [2001] EWCA Civ 1749, [2002] QB 769, [2001] All ER (D) 310 (Nov) (affd [2003] UKHL 16, [2003] 2 AC 491, [2003] 2 All ER 401); in turn applied in *Clark v Bowlit* [2006] EWCA Civ 978, [2007] PIQR P143.

8 Animals Act 1971 s 2(2)(c). The knowledge must clearly be of the precise characteristic displayed: see *Osborne v Choqueel* [1896] 2 QB 109 (dog's tendency to attack and bite other animals not relevant to attack on plaintiff); *Glanville v Sutton & Co Ltd* [1928] 1 KB 571 (horse's tendency to bite other horses not relevant to attack on plaintiff); *Worth v Gilling* (1866) LR 2 CP 1; *Jones v Perry* (1796) 2 Esp 482; *Curtis v Mills* (1833) 5 C & P 489; *Beck v Dyson* (1815) 4 Camp 198. In *Knapp v Harvey* [1911] 2 KB 725, CA, where the plaintiff had been ordered to give particulars of specific occasions on which the defendant's dog had bitten persons, interrogatories to the plaintiff to ascertain the names of the persons bitten were disallowed. A caution not to go near a dog has been held to be evidence of knowledge (see *Judge v Cox* (1816) 1 Stark 285; *Hartley v Harriman* (1818) 1 B & Ald 620); likewise a statement that a particular bull would run at anything red (*Hudson v Roberts* (1851) 6 Exch 697); but an offer of compensation ought not to be so regarded (*Beck v Dyson* (1815) 4 Camp 198; *Thomas v Morgan* (1835) 2 Cr M & R 496; *Sanders v Teape and Swan* (1884) 51 LT 263). See also *Flack v Hudson* [2001] QB 698, [2001] 2 WLR 982, [2000] All ER (D) 1701, CA (one keeper with knowledge of animal's abnormal characteristic strictly liable for injuries to fellow keeper without knowledge).

9 See *Draper v Hodder* [1972] 2 QB 556, [1972] 2 All ER 210, CA; *Fardon v Harcourt-Rivington* (1932) 146 LT 391, HL; cf *Fitzgerald v E D and A D Cooke Bourne (Farms) Ltd* [1964] 1 QB 249, [1963] 3 All ER 36, CA.

10 *Tallents v Bell and Goddard* [1944] 2 All ER 474, CA. The number of dogs involved in an attack may, however, be an important factor: see *Draper v Hodder* [1972] 2 QB 556, [1972] 2 All ER 210, CA. It is, however, questionable whether the statement in the text could be upheld in regard to those species of dog which have been designated under the Dangerous Dogs Act 1991; see PARA 912.

11 *Heath's Garage Ltd v Hodges* [1916] 2 KB 370, CA.

UPDATE

748 Necessity for knowledge

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/3. LIABILITY OF OWNERS AND KEEPERS OF ANIMALS/ (1) INJURIES CAUSED BY ANIMALS/749. Exceptions from liability.

749. Exceptions from liability.

A person is not liable for any damage¹ caused which would otherwise be the subject of strict liability² if it is due wholly to the fault³ of the person suffering it⁴, nor for any damage suffered by a person who has voluntarily accepted the risk of its happening⁵. However, a person employed as a servant by a keeper of an animal who incurs a risk incidental to his employment is not to be treated as accepting it voluntarily⁶.

Where a trespasser on any premises or structure suffers damage caused by any animal kept thereon, there will be no strict liability if it is proved either that the animal was not kept there for the protection of persons or property⁷ or, if it was so kept, that keeping it there for that purpose was not unreasonable⁸. It seems likely, however, that despite the Animals Act 1971, where a person enters under a claim of right, even if that right is contested, he could maintain a claim⁹.

1 As to the meaning of 'damage' see PARA 747 note 1.

2 Ie liability either for animals of a dangerous species (see PARA 747), or for animals of a non-dangerous species with abnormal dangerous characteristics coupled with knowledge of the same (see PARA 748).

3 'Fault' means negligence, breach of statutory duty or other act or omission which gives rise to a liability or would, apart from the Law Reform (Contributory Negligence) Act 1945, give rise to the defence of contributory negligence: s 4; Animals Act 1971 s 11; see **NEGLIGENCE** vol 78 (2010) PARA 75 et seq. A person who pats a dog which springs at and bites him has not been contributorily negligent: *Gordon v Mackenzie* 1913 SC 109, Ct of Sess.

4 Animals Act 1971 s 5(1); see *Marlor v Ball* (1900) 16 TLR 239, CA. See *Dhesi v Chief Constable of West Midlands Police* [2000] All ER (D) 1172, CA (where the claimant was caught and bitten by a police dog after repeated warnings that the dog would be released, it was held that the damage was entirely his own fault within the Animals Act 1971 s 5(1), or that he had voluntarily accepted the risk of damage within s 5(2)).

5 Animals Act 1971 s 5(2). See *Cummings v Grainger* [1977] QB 397, [1977] 1 All ER 104, CA. As to the defence of volenti non fit injuria generally see **NEGLIGENCE** vol 78 (2010) PARA 69 et seq. The voluntary acceptance of risk for these purposes cannot be construed as meaning according to a person's free will, but it does require knowledge of any risk which is being accepted: *Flack v Hudson* [2001] QB 698, [2001] 2 WLR 982, [2000] All ER (D) 1701, CA (rider was unaware of horse's previous reaction to agricultural machinery, and had not, therefore, voluntarily accepted responsibility for any such risk involved in riding the horse). See also *Dhesi v Chief Constable of West Midlands Police* [2000] All ER (D) 1172, CA, cited in note 4.

6 Animals Act 1971 s 6(5). Thus it appears that an employee whose duty is to tend a dangerous animal can now recover for any injury he sustains unless he has been entirely to blame; cf *Rands v McNeil* [1955] 1 QB 253, [1954] 3 All ER 593, CA (now overruled by the Animals Act 1971 s 6(5)); *James v Wellington City* [1972] NZLR 70, NZ SC.

7 Animals Act 1971 s 5(3)(a). Thus a trespasser in a properly fenced field who is gored by a savage bull has no remedy: *Brock v Copeland* (1794) 1 Esp 203, cited in *Bird v Holbrook* (1828) 4 Bing 628 at 638; see also *Marlor v Ball* (1900) 16 TLR 239, CA; *Sylvester v Chapman Ltd* (1935) 79 Sol Jo 777; *Lee v Walkers* (1939) 162 LT 89. Contrast *Mansfield v Baddeley* (1876) 34 LT 696; *Gould v McAuliffe* [1941] 2 All ER 527, CA; *Pearson v Coleman Bros* [1948] 2 KB 359, [1948] 2 All ER 274, CA (person in search of lavatory).

8 Animals Act 1971 s 5(3)(b). Whether it was reasonable or not must be a question of fact in each case according to the circumstances prevailing; thus the keeper of a fierce dog kept to protect his property would not be excused if he put it in the way of access to the house so that innocent visitors on lawful business might be injured: *Sarch v Blackburn* (1830) 4 C & P 297; and see *Smillie v Boyd* (1886) 14 R 150; *Cummings v Grainger* [1977] QB 397 [1977] 1 All ER 104, CA; *Kavanagh v Stokes* [1942] IR 596.

9 *Brock v Copeland* (1794) 1 Esp 203, cited in *Bird v Holbrook* (1828) 4 Bing 628 at 638.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/3. LIABILITY OF OWNERS AND KEEPERS OF ANIMALS/ (1) INJURIES CAUSED BY ANIMALS/750. Negligence.

750. Negligence.

The owner of a domestic and harmless animal may be liable on the ground of negligence for damage caused by it to third parties¹.

A person who brings an animal on to the highway must use all reasonable care to prevent it doing damage to other persons there². In general, the driving of animals along the highway without having them under sufficient control amounts to negligence which will entail a liability for resulting damage or injury³. The bolting of a horse which has been left unattended in a public street is *prima facie* evidence of negligence on the part of the owner⁴, and in certain circumstances the owner of a runaway horse may be liable to a person who tries to stop it⁵.

1 See eg *Draper v Hodder* [1972] 2 QB 556, [1972] 2 All ER 210, CA (child attacked by pack of Jack Russell terriers allowed to roam free; dogs previously harmless: owner liable); *Jones v Owen* (1871) 24 LT 587 (two dogs leashed together rushed against a passer-by, threw him down and broke his leg: owner held liable on ground of negligence in having two big dogs coupled together on highway at night and not keeping them in hand). Cf *Fardon v Harcourt-Rivington* (1932) 146 LT 391, HL (dog left in motor car). The owner may be liable where he leaves a dog in such a position and in such circumstances as to render it likely that the dog will cause damage to persons lawfully passing along the highway: *Sycamore v Ley* (1932) 147 LT 342, CA. A dog with a long loose lead on the streets is a nuisance, and also *prima facie* evidence of negligence: *Pitcher v Martin* [1937] 3 All ER 918. See also *Toogood v Wright* [1940] 2 All ER 306, CA (racing greyhounds; no special control required). As to the liability of the owner of an animal to a trespasser see PARA 749.

2 *Deen v Davis* [1935] 2 KB 282, CA (improper tethering); *Gomberg v Smith* [1963] 1 QB 25, [1962] 1 All ER 725, CA. As to straying on the highway see PARA 754.

3 *Turner v Coates* [1917] 1 KB 670 (unbroken colt driven without halter in the dark); *Harpers v Great North of Scotland Rly Co* (1886) 13 R 1139; *Pinn v Rew* (1916) 32 TLR 451; *Turnbull v Wieland* (1916) 33 TLR 143 (insufficient control of cows); *Rose v George Hurry Collier Ltd* [1939] WN 19, CA (mare of known nervous disposition left unattended on tow-path: owner liable for injury by kicking); *Lathall v A Joyce & Son* [1939] 3 All ER 854 (escape of bull through negligence; attack on human being unusual: no liability); *Aldham v United Dairies (London) Ltd* [1940] 1 KB 507, [1939] 4 All ER 522, CA (horse known to be restive left unattended on highway: owner liable for injury to passer-by directly caused therefrom); *Wright v Callwood* [1950] 2 KB 515, CA (animal driven from highway into yard escaped into highway and injured cyclist: owner not liable); *Bativa v West* [1970] 1 QB 716, [1970] 1 All ER 332 (pony escaping from gymkhana on to highway), where former ordinary rules in respect of escape on to highway (see PARA 754) not applied. Cf *Walker v Crabb* (1916) 33 TLR 119. In *Catchpole v Minster* (1913) 109 LT 953 it was held that a person driving a flock of sheep along a highway at night is under no duty to carry a light, but changed traffic conditions since this decision may well throw doubt on it. The Highway Code enjoins persons herding animals to carry lights after sunset. As to the effect of failure to observe the code see the Road Traffic Act 1988 s 38(7); and **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 221. As to the liability of market owners see *Brackenborough v Spalding UDC* [1942] AC 310, [1942] 1 All ER 34, HL; and see **MARKETS, FAIRS AND STREET TRADING**.

4 *Gayler and Pope Ltd v B Davies & Son Ltd* [1924] 2 KB 75.

5 *Haynes v Harwood* [1935] 1 KB 146, CA, criticising dicta of Scrutton LJ in *Cutler v United Dairies (London) Ltd* [1933] 2 KB 297 at 303, CA. As to civil liability for accidents arising from the negligent driving or riding of horses see **NEGLIGENCE** vol 78 (2010) PARAS 55, 59.

UPDATE

750 Negligence

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6

(meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/3. LIABILITY OF OWNERS AND KEEPERS OF ANIMALS/ (1) INJURIES CAUSED BY ANIMALS/751. Damage caused by infected animals.

751. Damage caused by infected animals.

The common law affecting diseases of animals¹ concerned itself primarily with liability to third parties for damage arising out of their condition.

Thus the owner or possessor of animals having an infectious or contagious disease is liable for the damage caused by their infected state in the following cases:

- 4 (1) if, knowing them to be suffering from an infectious or contagious disease, he allows them to mingle with the animals of another person²;
- 5 (2) if, knowing that they are diseased and infectious to persons handling them, he employs a person to handle their carcasses who is ignorant of their state, and that person becomes infected³;
- 6 (3) if, knowing of their diseased state, he gratuitously bails them (and a fortiori if the bailment is for reward), knowing that the bailee probably will or may place them with other animals which are healthy, without warning the bailee of their diseased state⁴;
- 7 (4) if he sells them with a warranty that they are free from infectious or contagious disease, whether he knows of their diseased state or not⁵;
- 8 (5) if he is guilty of fraud or actual concealment in the sale⁶;
- 9 (6) if, knowing them to be diseased, and that they may be put in with healthy animals, he sells them at a public market or fair, or at a public auction; and possibly even if he sells them privately⁷.

It is an indictable public nuisance to keep animals or fowls to the annoyance of the public through the unwholesomeness of their kennels or coops, or to take a horse diseased with glanders into a public place with the danger of infecting persons⁸.

1 For statutory provision for restricting the spread of disease see PARA 1040 et seq. As to the offence of deliberately infecting animals with disease see PARA 1048.

2 *Cooke v Waring* (1836) 2 H & C 332; *Earp v Faulkner* (1875) 34 LT 284 (knowledge of servant); *Theyer v Purnell* [1918] 2 KB 333; but see *Weller & Co v Foot and Mouth Disease Research Institute* [1966] 1 QB 569, [1965] 3 All ER 560, where the defendants were held to have no duty to the plaintiff cattle auctioneers, whose business suffered through the closure of markets owing to the escape of a cattle virus imported by the defendants for experimental purposes; it would be otherwise had the plaintiffs been owners of cattle infected.

3 *Davies v England and Curtis* (1864) 33 LJQB 321.

4 *Penton v Murduck* (1870) 22 LT 371, where the declaration (now the particulars of claim) alleging that the defendant knowingly delivered an infected horse to the plaintiff to be put with his horse without telling him it was infected was held good without any allegation of concealment, fraud or breach of warranty. The case was distinguished from *Hill v Balls* (1857) 2 H & N 299 on the ground that the latter was a case of buyer and seller and that there was no question of the diseased horse being put near another, but that case would now seem to be of very doubtful authority. As to bailment generally see **BAILMENT**.

5 *Ward v Hobbs* (1878) 4 App Cas 13, HL. As to warranties on sales of animals see PARA 726; and generally see **SALE OF GOODS AND SUPPLY OF SERVICES**.

6 *Mullett v Mason* (1866) LR 1 CP 559; *Clarke v Army and Navy Co-operative Society Ltd* [1903] 1 KB 155, CA.

7 *Bodger v Nicholls* (1873) 28 LT 441. As to markets and fairs generally see **MARKETS, FAIRS AND STREET TRADING**. As to auctions generally see **AUCTION**.

8 *R v Henson* (1852) Dears CC 24; and see generally **NUISANCE**.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/3. LIABILITY OF OWNERS AND KEEPERS OF ANIMALS/(2) TRESPASS AND NUISANCE/(i) Trespass/A. LIABILITY FOR TRESPASS/752. Involuntary trespass.

(2) TRESPASS AND NUISANCE

(i) Trespass

A. LIABILITY FOR TRESPASS

752. Involuntary trespass.

So far as those domestic animals are concerned which are comprised in the term 'livestock' as therein defined¹, the Animals Act 1971 makes the person to whom they belong strictly liable for damage caused by their trespassing on another's land², and this and the remedies open to the sufferer are dealt with elsewhere in this title³.

Cats are not within the statute, and nor were they at common law the subject of strict liability for damage while trespassing⁴. Strict liability for damage by trespassing dogs is restricted under the statute to dogs killing or injuring livestock⁵.

For trespass to take place, it is sufficient if any part of the animal crosses the boundary of the properties, for example, if it passes through the fence⁶ or stretches its neck over a ditch⁷. A mere trespass to the person or to goods such as horses or cattle does not generally render the owner of the trespassing animal liable where there is no trespass to land⁸.

Leave and licence of the plaintiff, if established, is a good defence⁹.

1 See PARA 755 note 1.

2 See the Animals Act 1971 s 4.

3 See PARA 755.

4 *Buckle v Holmes* [1926] 2 KB 125, CA.

5 Ie under the Animals Act 1971 s 3, which replaces the Dogs Act 1906 s 1(1)-(3). See, as to dogs generally PARA 904 et seq. In view of the comprehensive nature of the definition of livestock in the Animals Act 1971 s 11, it is doubtful if liability for domestic animals outside the definition other than dogs and cats in such circumstances is a practical problem, but it is submitted that in so far as it might arise the former rule would still apply, ie that their owner will be liable, if they escape and commit a trespass, for such damage as it is in their nature ordinarily to commit: *Cox v Burbidge* (1863) 13 CBNS 430. It is noted that the statutory rules under the Animals Act 1971 s 4 replace the rules of the common law imposing liability for cattle trespass: s 1(1)(c). For a full review of the authorities relative to the responsibilities of a master of foxhounds see *League Against Cruel Sports Ltd v Scott* [1986] QB 240, [1985] 2 All ER 489.

6 See *Ellis v Loftus Iron Co* (1874) LR 10 CP 10.

7 *Ponting v Noakes* [1894] 2 QB 281.

8 *Manton v Brocklebank* [1923] 2 KB 212, CA (mare kicked horse in field).

9 As to what must be proved when this defence is relied upon see *Wellaway v Courtier* [1918] 1 KB 200; *Park v Jobson & Son* [1945] 1 All ER 222, CA.

UPDATE

752 Involuntary trespass

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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753. Damage by reclaimed animals.

If a man reclaims wild animals and puts them on his land, he is liable, if they trespass, for any damage caused by them which it is in their ordinary nature to commit. Thus where pigeons from a dovecot fly on to neighbouring land and eat the corn, their owner is liable on a claim for the loss of the corn¹. Whether it is in the ordinary nature of hived bees to sting men or cattle² seems doubtful on the authorities, though it is difficult to resist the fact that everyone knows that they often do so. How long the owner of a reclaimed animal is liable after its escape is unclear. It is presumably a question of fact as to whether the animal has reverted to the wild state or not³.

1 *Dewell v Sanders* (1618) Cro Jac 490, where it was said that a dovecot is not a common nuisance, but that the court may take cognisance of it. Dicta in that case concerning a landowner's right to kill pigeons coming on his land were criticised, and the accuracy of the report of the case was doubted, in *Hamps v Darby* [1948] 2 KB 311, [1948] 2 All ER 474, CA.

2 See PARA 747 note 5.

3 See *Brady v Warren* [1900] 2 IR 632, where the defendant was held liable for damage done by park deer which had escaped some six years previously, and had wandered about uncontrolled ever since. Cf *Mitchil v Alestree* (1677) 1 Vent 295 per Twisden J.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/3. LIABILITY OF OWNERS AND KEEPERS OF ANIMALS/(2) TRESPASS AND NUISANCE/(i) Trespass/A. LIABILITY FOR TRESPASS/754. Trespass and straying on highway.

754. Trespass and straying on highway.

The owner of the soil of a highway may bring a claim for trespass if cattle depasture his herbage otherwise than in the lawful exercise of grazing rights¹. If cattle are being lawfully driven along the highway and they crop the roadside herbage, the trespass may be justified as involuntary².

The former common law principle whereby, because there was no general obligation on an owner or occupier of land adjoining a highway to fence his land or to keep his domestic animals off the highway, he was not liable for injury inflicted on a user of the highway save in certain exceptional circumstances when his animals escaped on to it, has been abolished by statute, and accordingly the ordinary principles of negligence now apply to such a situation³.

Where damage is caused by animals straying from unfenced land on to a highway, the person who placed them on the land is not to be regarded as being negligent in so doing if the land is either common land⁴, or is situated in an area where fencing is not customary⁵, or is a town or village green⁶, and if he had a right to place them where he did⁷.

Where animals are brought on to a highway a different principle applies⁸.

If any horse⁹, cattle, sheep, goats or swine are found straying or lying¹⁰ on or at the side of any highway¹¹, except on such part of it as passes over any common or waste or uninclosed ground¹², the keeper of the animals¹³ is liable to a maximum fine on summary conviction of level 3 on the standard scale¹⁴, together with the reasonable expenses, recoverable summarily as a civil debt, of removing the animals to his premises or the common pound or other place provided, and any proper charges of the pound-keeper¹⁵. This provision does not prejudice or affect any right of pasture which may exist on the side of a highway¹⁶, but a keeper exercising his right must keep his animals from straying, except temporarily, or lying on the actual road¹⁷. These penalties are provided for the protection of the public, and do not render the keeper liable to a civil claim¹⁸. The release, without lawful authority or excuse, of any animal so impounded or seized for the purpose of being so impounded, or the damaging of any place where it is impounded, is an offence punishable by a maximum fine on summary conviction of level 2 on the standard scale¹⁹.

Cattle²⁰ found at large in any street²¹ in a district to which the Town Police Clauses Act 1847²² applies, without any person having charge of them, may be impounded, by any constable or resident, in any common pound within the district²³ or in such other place as the local authority may appoint for the purpose; and may be detained until the owner pays the authority a penalty not exceeding level 1 on the standard scale and the reasonable expenses of impounding and keeping them²⁴. Provision is made for the sale of impounded cattle if the money is not paid within three days²⁵, and for punishing persons guilty of pound-breach²⁶.

1 *Stevens v Whistler* (1809) 11 East 51; *Cox v Burbidge* (1863) 13 CBNS 430; *Higgins v Searle* (1909) 100 LT 280, CA; *Heath's Garage Ltd v Hodges* [1916] 2 KB 370. See also *Durrant v Child* (1611) 1 Bulst 157; *Haigh v West* [1893] 2 QB 19, CA; and *A-G and Spalding RDC v Garner* [1907] 2 KB 480. As to the rights of the owner of the soil of a highway see further **HIGHWAYS, STREETS AND BRIDGES**.

2 Rolle Abr Trespass K.

3 Animals Act 1971 s 8(1), which reversed the rule in *Searle v Wallbank* [1947] AC 341, [1947] 1 All ER 12, HL.

4 'Common land' means land subject to rights of common (which includes cattlegates or beastgates and rights of sole or several vesture or herbage or of sole or several pasture, but not rights held for a term of years or from year to year), whether those rights are exercisable at all times or only during limited periods, and waste land of a manor not subject to rights of common, but does not include a town or village green (as to which see note 6) or any land forming part of a highway: Commons Registration Act 1965 s 22(1); Animals Act 1971 s 11. See **COMMONS** vol 13 (2009) PARA 407. As from a day to be appointed, 'common land', in this context, means land registered as common land in a register of common land kept under the Commons Act 2006 Pt 1 (ss 1-25), and land to which Pt 1 does not apply and which is subject to rights of common as defined in that Act: Animals Act 1971 s 11 (prospectively amended by the Commons Act 2006 s 52, Sch 5 para 2). At the date at which this volume states the law, no such day had been appointed.

5 'Fencing' includes the construction of any obstacle designed to prevent animals from straying: Animals Act 1971 s 11. It would thus include any ditch or cattle-grid designed for that purpose. Note that no definition is attempted of areas where fencing is not customary, which must remain a question of fact, presumably decided on evidence of local knowledge.

6 As to the meaning of 'town or village green' see the Commons Registration Act 1965 s 22(1), (1A), (1B): Animals Act 1971 s 11. As from a day to be appointed, 'town or village green', in this context, means land registered as a town or village green in a register of town or village greens kept under the Commons Act 2006 Pt 1 (see **COMMONS** vol 13 (2009) PARA 510): Animals Act 1971 s 11 (prospectively amended by the Commons Act 2006 Sch 5 para 2). At the date at which this volume states the law, no such day had been appointed.

7 Animals Act 1971 s 8(2). A person with a right to graze cattle on common land can license another to graze his cattle, thereby enjoying his protection: *Davies v Davies* [1975] QB 172, [1974] 3 All ER 817, CA. An owner is liable once the animal strays beyond the area of co-existing common land and highway: *Rees v Morgan* (1976) 120 Sol Jo 148.

8 See PARA 750.

9 'Horse' includes pony, ass and mule: Highways Act 1980 s 329(1).

10 The offences of allowing to 'stray' and allowing to 'lie' are distinct: *Lawrence v King* (1868) LR 3 QB 345. Animals are not 'straying' if they are under the control of an attendant: *Lawrence v King* (1868) LR 3 QB 345; *Morris v Jeffries* (1866) LR 1 QB 261; *Sherborn v Wells* (1863) 3 B & S 784; *Golding v Stocking* (1869) LR 4 QB 516; *Horwood v Goodall*, *Horwood v Hill* (1872) 36 JP 486. If they are 'lying' on or at the side of a highway the presence of a keeper is not in itself an excuse but apparently animals on a journey may be allowed to rest for a reasonable time: *Lawrence v King* (1868) LR 3 QB 345; *Horwood v Goodall*, *Horwood v Hill* (1872) 36 JP 486.

11 'Highway' means the whole or part of a highway other than a ferry or waterway, and includes a bridge over or tunnel through which the highway passes: Highways Act 1980 s 328(1), (2).

12 Highways Act 1980 s 155(1). This exception applies only to pieces of land of some considerable size: see *Bothamley v Danby* (1871) 24 LT 656; *Golding v Stocking* (1869) LR 4 QB 516; *Plumley v Lock* (1902) 67 JP 237, DC. As to rights of pasture see **COMMONS** vol 13 (2009) PARA 433 et seq.

13 'Keeper' means the person in whose possession the animals are: Highways Act 1980 s 155(1).

14 Highways Act 1980 ss 155(2), 310 (s 155(2) amended by virtue of the Criminal Justice Act 1982 ss 35, 38, 46). As to the standard scale see PARA 738 note 1.

15 Highways Act 1980 s 155(3). As to the recovery of civil debts see the Magistrates' Courts Act 1980 ss 58, 96; and **MAGISTRATES** vol 29(2) (Reissue) PARAS 826, 828. Any person lawfully using the highway may remove the animals to the pound, but if he does so he must ensure their welfare (see the Animal Welfare Act 2006 s 9; and PARA 831). As to his other duties see *Bignell v Clarke* (1860) 5 H & N 485; *Wilder v Speer* (1838) 8 Ad & El 547.

16 Highways Act 1980 s 155(5).

17 *Bothamley v Danby* (1871) 24 LT 656; *Golding v Stocking* (1869) LR 4 QB 516.

18 *Heath's Garage Ltd v Hodges* [1916] 2 KB 370, CA. See further *Catchpole v Minster* (1913) 109 LT 953; *Turner v Coates* [1917] 1 KB 670; *Gill v Carson and Nield* [1917] 2 KB 674, DC.

19 Highways Act 1980 ss 155(4), 310 (s 155(4) as amended: see note 14).

20 'Cattle' in this context includes horses, asses, mules, sheep, goats and swine: Town Police Clauses Act 1847 s 3.

- 21 As to the meaning of 'street' see the Town Police Clauses Act 1847 s 3; and PARA 912 note 4.
- 22 Originally the Town Police Clauses Act 1847 applied only to towns where it was incorporated in a local Act (s 1), but the provisions here referred to (ss 24-27) were applied to all boroughs and urban districts by the Public Health Act 1875 s 171, which now extends them throughout England and Wales, except in Greater London (Local Government Act 1972 s 180, Sch 14 Pt II paras 23, 26 (a)). See further **LOCAL GOVERNMENT** vol 69 (2009) PARA 1 et seq.
- 23 The local authority may provide and maintain a pound: Town Police Clauses Act 1847 s 27.
- 24 Town Police Clauses Act 1847 s 24 (amended by virtue of the Criminal Law Act 1977 s 31(6); and the Criminal Justice Act 1982 ss 37, 46).
- 25 Town Police Clauses Act 1847 s 25.
- 26 Town Police Clauses Act 1847 s 26. As to the offence of pound-breach see PARA 761.

UPDATE

754 Trespass and straying on highway

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/3. LIABILITY OF OWNERS AND KEEPERS OF ANIMALS/(2) TRESPASS AND NUISANCE/(i) Trespass/A. LIABILITY FOR TRESPASS/755. Liability for trespassing livestock.

755. Liability for trespassing livestock.

Where livestock¹ belonging to any person² strays on to land in the ownership or occupation of another person and there causes damage³ to the land or any property on it in that person's ownership or possession, the person to whom the livestock belongs is liable for that damage⁴, and also for any expenses reasonably incurred by that other person in keeping the livestock while it cannot be restored to the person to whom it belongs, or while the right of detention is being exercised over it⁵, or while it is being ascertained to whom it belongs⁶.

Thus the old common law rule of strict liability for cattle trespass irrespective of negligence has been preserved by statute⁷, and the aggrieved person has a right to claim in trespass.

There is, however, no liability for damage caused by livestock trespassing on another's land where the livestock strayed from a highway and its presence there was a lawful use of the highway⁸, nor where the damage is due wholly to the fault⁹ of the person suffering it¹⁰. A person is not to be considered as being at fault in regard to any damage suffered by him by reason only that he could have prevented it by fencing¹¹, but no one is to be liable for such damage where it is proved that the straying of the livestock on to the land would not have occurred but for a breach by any other person, being someone with an interest in the land, of a duty to fence¹².

Although the Animals Act 1971 binds the Crown, no proceedings under the Act may be brought against the Sovereign in her private capacity¹³.

1 'Livestock' means cattle, horses, asses, mules, hinnies, sheep, pigs, goats and poultry, and also deer not in the wild state; and 'poultry' means the domestic varieties of fowls, turkey, geese, ducks, guinea-fowls, pigeons, peacocks and quails: Animals Act 1971 s 11. Dogs (see PARA 752) and cats (see *Buckle v Holmes* [1926] 2 KB 125, CA) have never created this liability at common law.

2 For this purpose livestock belongs to the person in whose possession it is: Animals Act 1971 s 4(2).

3 Despite the definition of 'damage' in the Animals Act 1971 s 11 as including death or personal injury, it is submitted that the wording of s 4 makes clear that any damage to land and property is included. Moreover, though mere treading down of herbage, or even encumbering the land, may be a sufficient damage (*Ambergate Rly Co v Midland Rly Co* (1853) 2 E & B 793), it seems that damage to game or other animals *ferae naturae* is not, since they are the subject of only potential, not actual, property (see PARA 711). Quaere whether damage by infection is included: see *Theyer v Purnell* [1918] 2 KB 333. Thus *Wormald v Cole* [1954] 1 QB 614, [1954] 1 All ER 683, CA, is overruled by the Animals Act 1971 s 1. See also PARA 751. Damage for which liability exists in any person is to be treated as his fault for the purposes of the Fatal Accidents Act 1976, the Law Reform (Contributory Negligence) Act 1945 and the Limitation Act 1980: Animals Act 1971 s 10 (amended by the Limitation Act 1980 s 40, Sch 3 para 10; and by virtue of the Fatal Accidents Act 1976 s 6(1), Sch 1 para 1(1)); see **NEGLIGENCE**. As to the meaning of 'fault' in this context see the Law Reform (Contributory Negligence) Act 1945 s 4; the Animals Act 1971 s 11; and PARA 749 note 3.

4 Animals Act 1971 s 4(1)(a).

5 For the right to detain trespassing livestock see the Animals Act 1971 s 7(2), (3); and PARA 758.

6 Animals Act 1971 s 4(1)(b). See *Morris v Blaenau Gwent District Council* (1982) 80 LGR 793, (1982) Times, 6 July, CA.

7 See *Ellis v Loftus Iron Co* (1874) LR 10 CP 10; *Tillett v Ward* (1882) 10 QBD 17; and *Read v J Lyons & Co Ltd* [1947] AC 156, [1946] 2 All ER 471, HL. Presumably the defence of act of God would still be available: see *Powell v Salisbury* (1828) 2 Y & J 391.

8 Animals Act 1971 s 5(5); see further PARA 756.

9 As to the meaning of 'fault' see the Law Reform (Contributory Negligence) Act 1945 s 4, the Animals Act 1971 s 11; and PARA 749 note 3.

10 Animals Act 1971 s 5(1).

11 As to the meaning of 'fencing' see PARA 754 note 5.

12 Animals Act 1971 s 5(6). This is designed to overcome the difficulty caused by the decision and the circumstances prevailing in *Crow v Wood* [1971] 1 QB 77, [1970] 3 All ER 425, CA.

13 Animals Act 1971 s 12(1).

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756. Trespass from the highway.

An exception to the rule of strict liability for damage done by trespassing livestock¹ exists where the livestock strays from the highway, and its presence there was a lawful use of the highway². In such cases it is necessary to prove negligence, and in the absence of negligence the person to whom the livestock belongs is not liable for damage³. It is a risk a man takes who has property adjoining the highway, and the loss falls upon him if he does not take precautions by fencing or otherwise to protect it⁴. Where, therefore, an ox being driven through a street went through an open shop door without any negligence on the drover's part, and did damage before it could be driven out, the owner was not liable⁵.

It is submitted, however, that this exception must be modified in the event of an animal straying from a highway on to adjoining land and a wholly unreasonable delay occurring before it is removed⁶.

1 See PARA 755.

2 Animals Act 1971 s 5(5), which restates the common law position which enabled animals which were trespassing on the highway (eg using it for grazing or for any purpose other than passing or repassing) and which strayed on to adjoining land, to be distrained damage feasant at once: *Dovaston v Payne* (1795) 2 Hy Bl 527. See *Decouvreur v Jordan* (1987) Times, 25 May, CA, confirming that the exception provided by the Animals Act 1971 s 5(5) does not apply where the animal strayed onto the highway, ie where the presence of the animal there was not a lawful use of the highway.

3 *Tillett v Ward* (1882) 10 QBD 17; *Gayler and Pope Ltd v B Davies & Son Ltd* [1924] 2 KB 75; cf *Gilligan v Robb* 1910 SC 856, Ct of Sess.

4 *Goodwyn v Cheveley* (1859) 4 H & N 631; cf *Fletcher v Rylands* (1866) LR 1 Exch 265; affd sub nom *Rylands and Horrocks v Fletcher* (1868) LR 3 HL 330. On the other hand, a railway company was held not bound to fence against straying and trespassing cattle under the Railways Clauses Consolidation Act 1845 s 68; *Luscombe v Great Western Rly Co* [1899] 2 QB 313.

As to the duties imposed on railway undertakings with regard to fencing, etc against straying cattle, and the duty to provide watering places where railways divide the land of an owner see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARAS 337, 338, 340.

5 *Tillet v Ward* (1882) 10 QBD 17. It is hardly necessary to support this decision by reference to this exception, for there is no liability for an involuntary trespass, which seems a much shorter ground for the decision. Indeed it is the precise case mentioned in *Mitten v Faudrye* (1626) Poph 161 at 162, of a man driving 'goods' through a town, one of which goes into another man's house, as an instance of an involuntary trespass. The decision did not turn on the fact that the door was open: see *Gayler and Pope Ltd v B Davies & Son Ltd* [1924] 2 KB 75. As to involuntary trespass see **TORT** vol 97 (2010) PARA 572.

6 See *Goodwyn v Cheveley* (1859) 4 H & N 631.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/3. LIABILITY OF OWNERS AND KEEPERS OF ANIMALS/(2) TRESPASS AND NUISANCE/(i) Trespass/A. LIABILITY FOR TRESPASS/757. No trespass by wild animals.

757. No trespass by wild animals.

No action will lie for the trespass of animals *ferae naturae* on the land of another, for the owner has only a qualified property in them while they are alive, and they go with and belong to the soil; as soon as they have crossed from the land of one man to that of another, the latter, though not the owner, has the right to kill them and reduce them into possession¹. An owner of land, therefore, is not liable for the damage done by rabbits or other wild animals that come from his land (for his neighbour may kill them as soon as they come on his land²) unless he brings on to his land a greater quantity of game or wild animals than can reasonably and properly be kept on it, in which case he is liable for damage done by them on the principle that one must so use one's own property as not to injure that of another³.

It is apprehended that a claim will not lie unless the defendant has actually brought the animals on to the land; a mere failure to keep the existing stock within reasonable limits would not, apart from express agreement to do so, be sufficient; and the fact that rabbits have become a nuisance owing to their numbers does not justify entering upon the land of another and digging up the burrows to abate the nuisance⁴.

1 See PARAS 711, 714.

2 Cf *Boulston's Case* (1597) 5 Co Rep 104b; *Stearn v Prentice Bros Ltd* [1919] 1 KB 394 (rats escaping from defendants' premises and damaging plaintiff's corn); *Brady v Warren* [1900] 2 IR 632.

3 *Farrer v Nelson* (1885) 15 QBD 258 (shooting tenant brought on to the land in coops 450 pheasants which had been reared elsewhere: held liable for damage); *Seligman v Docker* [1949] Ch 53, [1948] 2 All ER 887. Cf *Boulston's Case* (1597) 5 Co Rep 104b, where the making of the rabbit burrows was an active interference with the existing state of things on the land; *Hilton v Green* (1862) 2 F & F 821; *Birkbeck v Paget* (1862) 31 Beav 403. Where the tenant of an agricultural holding has sustained damage to his crops from game which he has not the right to kill, he is entitled to statutory compensation against his landlord and, where the right to kill the game is vested in some person other than the landlord, the landlord is entitled to be indemnified by that other person; see the Agricultural Holdings Act 1986 s 20; and **AGRICULTURAL LAND** vol 1 (2008) PARA 424. (Note that that Act does not apply to farm business tenancies; see the Agricultural Tenancies Act 1995 s 4). As to the duty imposed on occupiers to clear and free the land of rabbits see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1021 et seq.

4 *Cooper v Marshall* (1757) 1 Burr 259.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/3. LIABILITY OF OWNERS AND KEEPERS OF ANIMALS/(2) TRESPASS AND NUISANCE/(i) Trespass/B. REMEDIES FOR TRESPASS; DISTRESS/758. Right to detain trespassing livestock.

B. REMEDIES FOR TRESPASS; DISTRESS

758. Right to detain trespassing livestock.

Where livestock¹ strays on to any land, the occupier of the land has not only a claim against the person to whom the livestock belongs for any damage it may there cause², but also an immediate right to detain the livestock, provided that at the time it is not under anyone's control³.

The right of detention ceases:

- 10 (1) at the end of a period of 48 hours, unless within that period notice of the detention has been given to the officer in charge of a police station and also, if the person exercising the right of detention knows to whom the livestock belongs, to that person⁴; or
- 11 (2) when sufficient money is tendered to satisfy any claim for damage caused by the livestock on the land and any expenses reasonably incurred in keeping it⁵; or
- 12 (3) if no such claim exists⁶, when the livestock is claimed by a person entitled to its possession⁷; or
- 13 (4) when a court orders the return of the livestock⁸.

Any person exercising this power of detention is liable for any damage caused to the detained livestock by a failure to treat it with reasonable care and to supply it with adequate food and water⁹.

The above right of detention and its corollary, the right of sale after detention¹⁰, replaces the old common law remedy of distress damage feasant¹¹, which had become virtually obsolete. The old right to distrain carried no right of pursuit¹², and it seems that this would apply equally to its successor.

1 As to the meaning of 'livestock' see PARA 755 note 1.

2 As to this right to claim see PARA 755.

3 Animals Act 1971 s 7(2).

4 Animals Act 1971 s 7(3)(a).

5 Animals Act 1971 s 7(3)(b). As to such a claim and expenses see s 4(1); and PARA 755. See also *Morris v Blaenau Gwent District Council* (1982) 80 LGR 793, Times, 6 July, CA.

6 If no claim under the Animals Act 1971 s 4. No claim can exist where there has been no damage to land or property by the trespassing livestock or any expenses in keeping it. Moreover, no claim can lie for this purpose in respect of damage done by or expenses incurred in connection with the livestock before the particular straying which led to the detention: s 7(7).

7 Animals Act 1971 s 7(3)(c). This person obviously need not be the owner, or even someone on his behalf but, whatever right to possession the claimant may have, he must clearly establish it to the reasonable satisfaction of the person detaining the livestock.

8 Animals Act 1971 s 7(2).

9 Animals Act 1971 s 7(6). A person responsible for an animal is also under a duty imposed by the Animal Welfare Act 2006 s 9 to ensure its welfare; see PARA 831.

10 See PARA 759.

11 Animals Act 1971 s 7(1). It is submitted that since the statutory right is similar, in that it is a mere right of detention, albeit linked with a later right of sale, the person detaining the livestock would similarly have no right to use it in any way, 'for he hath it by law only for a gage' (*Bagshawe v Goward* (1607) Cro Jac 147); such a user entitled the owner to interfere and recover his beast, the distrainer by his action becoming a trespasser ab initio: see *Smith v Wright* (1861) 6 H & N 821.

12 *Vaspor v Edwards* (1701) 12 Mod Rep 658; cf *Clement v Milner* (1800) 3 Esp 95.

UPDATE

758 Right to detain trespassing livestock

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/3. LIABILITY OF OWNERS AND KEEPERS OF ANIMALS/(2) TRESPASS AND NUISANCE/(i) Trespass/B. REMEDIES FOR TRESPASS; DISTRESS/759. Right to sell detained livestock.

759. Right to sell detained livestock.

Where livestock¹ has been lawfully detained² for a period of not less than 14 days after straying on to land other than that of the person to whom it belongs³, the detainer may sell it, either at a market or by public auction, unless proceedings are then pending for the return of the livestock or for any claim⁴ by the detainer for damage done by the livestock or for expenses in keeping it⁵.

Where such a sale takes place and the proceeds of sale, less the costs of and incidental to it, exceed the amount of any claim which the vendor had in respect of such damage and expenses, then the excess is recoverable from him by the person who would be entitled to the possession of the livestock but for the sale⁶.

1 As to the meaning of 'livestock' see PARA 755 note 1.

2 As to detention see PARA 758.

3 For this purpose livestock belongs to the person in whose possession it is: Animals Act 1971 s 4(2).

4 Ie under the Animals Act 1971 s 4; see PARA 755.

5 Animals Act 1971 s 7(4). As to markets generally see **MARKETS, FAIRS AND STREET TRADING**.

6 Animals Act 1971 s 7(5).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/3. LIABILITY OF OWNERS AND KEEPERS OF ANIMALS/(2) TRESPASS AND NUISANCE/(i) Trespass/B. REMEDIES FOR TRESPASS; DISTRESS/760. Distress on agisted animals.

760. Distress on agisted animals.

Agisted animals¹ are not, at common law, privileged from distress for rent² any more than cattle that have escaped on to the land³, except in the case of a temporary agistment on the road to or at a fair or market⁴, which is a consequence arising out of the necessity for their refreshment, and is an instance of a privilege arising as accessory to another privilege⁵.

In the case of an agricultural holding⁶ there is a statutory exemption: livestock taken in by the tenant of such a holding to be fed at a fair price⁷ may not be distrained by the landlord for rent where there is other sufficient distress to be found and, if they are distrained by reason of there being no other sufficient distress, the landlord can only recover by such distress rent up to the price of the feeding which remains unpaid⁸, subject to the owner's right to redeem the livestock by paying that price to the distrainor⁹. So long as any portion of the livestock remains on the holding the right to distrain extends to the full extent of the unpaid price of feeding the whole of the livestock¹⁰.

1 As to agistment generally see PARAS 721-723.

2 Bac Abr, Distress B; Rolle Abr 669. But it is perhaps open to argument that an exemption from liability to be distrained may be claimed on the ground that agisted animals are delivered to the agister in the regular way of his trade: *Miles v Furber* (1873) LR 8 QB 77. As to the prospective abolition of distress for rent, and as to distress generally, see **DISTRESS**.

3 Co Litt 47a.

4 2 Saund 290 n 7; *Nugent v Kirwan* (1838) 1 Jebb & S 97.

5 Per Alderson B in *Muspratt v Gregory* (1836) 1 M & W 633 at 647.

6 As to the meaning of 'agricultural holding' see **AGRICULTURAL LAND** vol 1 (2008) PARA 323.

7 The 'fair price' need not necessarily be money. Cows agisted on the terms of 'milk for meat' (a form of contract by which the farmer takes the milk of the cows, instead of a money payment, in return for their feed) are 'taken in to be fed at a fair price' within the meaning of this provision, and are entitled to the partial exemption (*London and Yorkshire Bank v Belton* (1885) 15 QBD 457), but livestock taken in under a contract for the letting of the herbage or grazing of land are not protected by this provision: *Masters v Green* (1888) 20 QBD 807. Cf *Burt v Moore* (1793) 5 Term Rep 329.

8 Agricultural Holdings Act 1986 s 18(1), (2). 'Livestock' includes any animal capable of being distrained: s 18(5). (Note that that Act does not apply to farm business tenancies: see the Agricultural Tenancies Act 1995 s 4 (amended by SI 2006/2805)). The Agricultural Holdings Act 1986 s 18 is repealed, as from a day to be appointed, by the Tribunals, Courts and Enforcement Act 2007 ss 86, 146, Sch 14 paras 41, 42, Sch 23 Pt 4. At the date at which this volume states the law, no such day had been appointed.

9 Agricultural Holdings Act 1986 s 18(3).

10 Agricultural Holdings Act 1986 s 18(4).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/3. LIABILITY OF OWNERS AND KEEPERS OF ANIMALS/(2) TRESPASS AND NUISANCE/(i) Trespass/B. REMEDIES FOR TRESPASS; DISTRESS/761. Unlawful release of impounded animals.

761. Unlawful release of impounded animals.

At common law pound-breach is an indictable offence, though it may perhaps be regarded as virtually obsolete. It consists in the forcible release of cattle or other animals lawfully placed in a proper pound¹, or in forcibly damaging or destroying the pound with that object².

Where the Town Police Clauses Act 1847 applies³, every person who releases or attempts to release any cattle from any pound or place where they are impounded, or who pulls down, damages, or destroys such pound or place, or any part thereof, with intent to procure the unlawful release of such cattle, is liable on summary conviction to imprisonment for up to three months⁴.

Now that the right of distress damage feasant has been abolished in relation to animals⁵, the only remaining relevance of pounds would seem to be in connection with distress for rent⁶, or after removal of any animal from the highway under the Highways Act 1980⁷.

1 Formerly, animals impounded or confined in a pound had to be properly fed and watered; failure to do so on the part of the person impounding them was a summary offence: Protection of Animals Act 1911 s 7(1) (repealed). Now under the Animal Welfare Act 2006 s 9 there is a more general duty of the person responsible for an animal (who may be a person only temporarily responsible: see s 3(1); and PARA 821) to ensure its welfare: see PARA 831.

2 See *R v Bradshaw* (1835) 7 C & P 233; *Green v Duckett* (1883) 11 QBD 275; and *R v Butterfield* (1893) 17 Cox CC 598. See further **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

3 As to the application of this Act see PARA 754 note 22.

4 Town Police Clauses Act 1847 s 26. As from a day to be appointed, the penalty of imprisonment is replaced by a fine not exceeding level 3 on the standard scale: s 26 (prospectively amended by the Criminal Justice Act 2003, s 304, Sch 32 Pt 2 para 148). At the date at which this volume states the law, no such day had been appointed. As to the standard scale see PARA 738 note 1.

5 Animals Act 1971 s 7(1). See further PARA 758.

6 As to the prospective abolition of distress for rent, and as to distress generally, see **DISTRESS**. As to distress on agisted animals see PARA 760.

7 See PARA 754.

UPDATE

761 Unlawful release of impounded animals

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/3. LIABILITY OF OWNERS AND KEEPERS OF ANIMALS/(2) TRESPASS AND NUISANCE/ (ii) Nuisance/762. Nuisance and anti-social behaviour.

(ii) Nuisance

762. Nuisance and anti-social behaviour.

The keeping of any animals¹ in such a position or in such circumstances as to cause material discomfort or annoyance to the public in general or to a particular person is a nuisance, public or private, as the case may be². Thus, in one case, to keep pigs near a public place in a town was held to be an indictable nuisance³; and injunctions have been granted against keeping animals in such circumstances as to cause discomfort or annoyance to neighbours⁴. The keeping of animals may also be the subject of an anti-social behaviour order⁵.

It is an indictable public nuisance to keep animals or fowls to the annoyance of the public through the unwholesomeness of their kennels or coops, or to take a horse diseased with glanders into a public place with the danger of infecting persons⁶.

1 As to liability for injuries caused by animals see PARAS 747-750; as to diseased animals and liability for damage caused by them see PARA 751. As to animals straying on a highway see PARA 754.

2 As to the distinction between public and private nuisance see **NUISANCE** vol 78 (2010) PARAS 105-108.

3 *R v Wigg* (1705) 2 Ld Raym 1163.

4 See *Ball v Ray* (1873) 8 Ch App 467; *Broder v Saillard* (1876) 2 ChD 692; *Rapier v London Tramways Co* [1893] 2 Ch 588, CA (all cases of horses in stables near private property); *A-G v Squire* (1906) 5 LGR 99 (pigs in premises adjoining a village street); *Leeman v Montagu* [1936] 2 All ER 1677 (cockerels crowing in the early morning). Keeping pigs is a frequent source of complaint: see eg *Milner v Spencer* (1976) 239 Estates Gazette 573; *Bone v Seale* [1975] 1 All ER 787, [1975] 1 WLR 797, CA; *Wheeler v JJ Saunders Ltd* [1996] Ch 19, [1995] 2 All ER 697, CA.

5 As to anti-social behaviour orders see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARAS 304 et seq, 496 et seq. See also **NUISANCE**.

6 *R v Henson* (1852) Dears CC 24; and see generally **NUISANCE**.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(1) OWNERS' AND TENANTS' RIGHTS/(i) Owners' Rights/763. Rights of owner-occupier.

4. GAME RIGHTS

(1) OWNERS' AND TENANTS' RIGHTS

(i) Owners' Rights

763. Rights of owner-occupier.

Where an owner-occupier of land reserves to himself the rights over the game¹ on the land, then subject to the general protective provisions of the law in the interests of wildlife² he may kill and take such game whenever and however he pleases.

Where an owner-occupier grants the game rights over his land to another, the latter may exercise those rights in the same manner and to the same extent as the owner. The owner-occupier, however, has a concurrent right to kill ground game³.

1 As to the meaning of 'game' see PARA 717.

2 See PARA 818.

3 See the Ground Game Act 1880 s 1; and PARA 772. 'Ground game' means hares and rabbits: s 8.

UPDATE

763-778 Owners' and Tenants' Rights

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(1) OWNERS' AND TENANTS' RIGHTS/(i) Owners' Rights/764. Rights of non-occupying owner.

764. Rights of non-occupying owner.

If the owner does not occupy his own land, but lets it to a tenant, the rights over game may or may not be reserved. Where they are not reserved they pass in every case, with the possession of the land, to the tenant¹.

¹ *Pochin v Smith* (1887) 52 JP 4, DC; *Anderson v Vicary* [1900] 2 QB 287, CA. As to the occupier's rights in respect of ground game see PARA 772. This is in accordance with the common law doctrine as to rights arising out of the land. The rule was finally established as to existing leases by the Game Act 1831 s 7 (amended by the Statute Law Revision (No 2) Act 1888; and SI 2007/2007), which expressly reserved to the landlord all rights over game in the case of all such leases except where the rights were specifically granted to the tenant or where the lease was for more than 21 years. All future leases, however, were left to be governed, except where the game was specifically reserved (see PARA 765 note 2), by the general law of trespass. See also *Saunders v Pitfield* (1888) 58 LT 108, DC.

UPDATE

763-778 Owners' and Tenants' Rights

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(1) OWNERS' AND TENANTS' RIGHTS/(i) Owners' Rights/765. Reservation by lessor of game rights.

765. Reservation by lessor of game rights.

The power to reserve a right of entry on the land to the owner or any other person is expressly saved by statute¹. The reservation may be effected either by a covenant in the lease or by a separate contract², and the terms of the agreement may enable the right to be exercised by persons not parties to the instrument reserving the right³. The reservation need not be made by deed; a verbal reservation is sufficient⁴.

A reservation to the lessor of exclusive sporting rights is void in so far as it applies to ground game⁵, but such a reservation is severable, and in so far as it applies to any other game than ground game it is valid⁶. The right to the game being regarded as a right arising out of the land, such a covenant for reservation of the sporting rights may be sued on by an assignee of the reversion⁷.

The reserved right is defended by statutory provisions which make it an offence, punishable with a fine not exceeding level 1 on the standard scale, for the tenant in such a case to kill or take the game other than ground game or to permit anyone else to do so⁸. In the case, however, of a tenancy created since 1880, the landlord cannot by any reservation of the sporting rights deprive the tenant of the right to kill ground game⁹.

1 See the Game Act 1831 s 8 (amended by the Statute Law Revision (No 2) Act 1888; and the Wild Creatures and Forest Laws Act 1971 s 1, Schedule). A landlord who reserves such rights may authorise another person to enter the land and kill game: see the Game Act 1831 s 11 (amended by the Statute Law Revision (No 2) Act 1888; and by SI 2007/2007).

2 The usual method is to insert a covenant in the lease creating the tenancy, but the right of entry may be contained in any deed, grant, lease or any written or parol demise or contract. As to leases generally see **LANDLORD AND TENANT**.

3 *Wickham v Hawker* (1840) 7 M & W 63; *Gardiner v Colyer* (1864) 10 LT 715.

4 *Jones v Williams and Roberts* (1877) 46 LJMC 270, DC; and see *R v Thurlstone (Inhabitants)* (1859) 1 E & E 502; *Coleman v Bathurst* (1871) LR 6 QB 366.

5 See the Ground Game Act 1880 s 3. As to the meaning of 'ground game' see PARA 763 note 3.

6 *Stanton v Brown* [1900] 1 QB 671, DC. The tenant may recover damages from the shooting tenant in respect of injury caused to his crops by the land being overstocked with game: see *Farrer v Nelson* (1885) 15 QBD 258. The overstocking must, however, be due to the defendant's extraordinary, non-natural or unreasonable action: see *Seligman v Docker* [1949] Ch 53, [1948] 2 All ER 887, where the increase of pheasants was found to be due to weather conditions; *Peech v Best* [1931] 1 KB 1, CA.

7 *Hooper v Clark* (1867) LR 2 QB 200. A condition of re-entry, if the tenant is guilty of an offence against the game laws, does not go with the reversion, as that is not a covenant arising out of the land: *Stevens v Copp* (1868) LR 4 Exch 20.

8 Game Act 1831 s 12 (amended by the Statute Law Revision (No 2) Act 1888; the Criminal Law Act 1977 s 31(6); the Statute Law (Repeals) Act 1989; and by virtue of the Criminal Justice Act 1982 ss 37, 46). This similarly applies to infringement by the tenant of the rights of a shooting tenant: see PARA 768. As to the standard scale see PARA 738 note 1.

9 See the Ground Game Act 1880 s 3. The tenant's right, however, is subject to the restrictions contained in s 6; see PARA 767.

UPDATE

763-778 Owners' and Tenants' Rights

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(1) OWNERS' AND TENANTS' RIGHTS/(i) Owners' Rights/766. Effect of reservation of game rights.

766. Effect of reservation of game rights.

When the game rights are reserved, the owner, or any person to whom he may grant them, may exercise the rights to the same extent and precisely as if he were the occupier of the land, subject to:

- 14 (1) such rights over the ground game as are given to the tenant by the Ground Game Acts¹; and
- 15 (2) such claim as the tenant may have in respect of damage caused by game².

A reservation of sporting rights by the owner operates by way of regrant by the tenant to the owner, and the parties' rights must be ascertained on that footing³. The tenant is entitled to use the land and to destroy gorse and underwood in the ordinary way⁴ or to carry out any reasonable and normal operations which might be deemed advisable for the purpose of dealing with the land to the best advantage⁵, but he must not designedly drive the game away⁶, or adopt farming practices which interfere with the exercise of the owner's rights⁷. On the other hand the owner, or his tenant of shooting rights, must not trample fields of standing crops at a time when it is not usual or reasonable to do so⁸, and if the owner or that tenant causes game to increase to an unreasonable extent, the tenant of the land can recover damages for the injury to his crops⁹. The owner was formerly, however, entitled to be indemnified by the shooting tenant against compensation claims¹⁰, but not if the grant to the shooting tenant does not enable him to shoot on the part of the land adversely affected¹¹.

A reservation must be construed strictly against the person claiming under it¹². The meaning of the word 'game' in a deed reserving sporting rights is a matter of the construction of the document¹³. The more usual agreement reserving the shooting or sporting rights has the effect of reserving the right to kill all things which are usually the object of sport¹⁴.

A covenant that the tenant is not to destroy the game does not have the effect of reserving the right of killing it to a landlord who does not reserve the right of entry for that purpose¹⁵.

1 See PARA 772.

2 See PARA 765 note 6 and the text to note 9; and see **AGRICULTURAL LAND** vol 1 (2008) PARA 424.

3 See *Houston v Marquis of Sligo* (1886) 55 LT 614, HL; *Wickham v Hawker* (1840) 7 M & W 63; *Mason v Clarke* [1954] 1 QB 460, [1954] 1 All ER 189, CA; revsd on other grounds [1955] AC 778, [1955] 1 All ER 914, HL, but see at 786 and 915-916 respectively per Viscount Simonds.

4 *Jeffryes v Evans* (1865) 19 CBNS 246.

5 *Peech v Best* [1931] 1 KB 1, CA; cf *Mason v Clarke* [1955] AC 778, [1955] 1 All ER 914, HL; and as to reservations generally see **DEEDS AND OTHER INSTRUMENTS**.

6 *Jeffryes v Evans* (1865) 19 CBNS 246; and see *Mason v Clarke* [1955] AC 778, [1955] 1 All ER 914, HL.

7 *Pole v Peake* [1998] NPC 121, [1998] EGCS 125, CA.

8 *Hilton v Green* (1862) 2 F & F 821.

9 *Hilton v Green* (1862) 2 F & F 821; *Birkbeck v Paget* (1862) 31 Beav 403; *Farrer v Nelson* (1885) 15 QBD 258.

10 Agricultural Holdings Act 1986 s 20(5); see **AGRICULTURAL LAND** vol 1 (2008) PARA 424. The Agricultural Holdings Act 1986 does not apply in relation to any tenancy beginning on or after 1 September 1995 except in special cases: see the Agricultural Tenancies Act 1995 s 4; and **AGRICULTURAL LAND** vol 1 (2008) PARA 301 et seq. New tenancies, however, frequently incorporate terms from the Agricultural Holdings Act 1986.

11 See *Cornewall v Dawson* (1871) 24 LT 664.

12 See **DEEDS AND OTHER INSTRUMENTS**. See also *Moore v Earl of Plymouth* (1817) 7 Taunt 614 (liberty of 'hunting' does not include shooting feathered game); *Wickham v Hawker* (1840) 7 M & W 63 (conveyance of land by A and B to D, excepting and reserving sporting rights to A, B and C, is not a reservation but a new grant by D); *Browne v Marquis of Sligo* (1859) 10 I Ch R 1 (agreement giving tenant exclusive shooting and coursing rights but not fishing, held to reserve fishing rights to landlord); *Jeffryes v Evans* (1865) 19 CBNS 246 (reservation of right of 'shooting and sporting' is not limited to game strictly so called); *Houston v Marquis of Sligo* (1886) 55 LT 614, HL (exception of shooting 'by way of grant and not of reservation' is a regrant by tenant to landlord). See also the text to note 15.

13 See PARA 717.

14 *Jeffryes v Evans* (1865) 19 CBNS 246; *Moore v Earl of Plymouth* (1817) 7 Taunt 614 at 627. While a tenant who infringes reserved rights of killing game, strictly defined, commits an offence (see PARA 789 text and note 5), a tenant who kills other birds, the right to which may have been reserved, is only liable to an action for breach of the covenant or agreement.

15 *Coleman v Bathurst* (1871) LR 6 QB 366.

UPDATE

763-778 Owners' and Tenants' Rights

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(1) OWNERS' AND TENANTS' RIGHTS/ (ii) Tenants' Rights/A. IN GENERAL/767. Shooting ground game at night.

(ii) Tenants' Rights

A. IN GENERAL

767. Shooting ground game at night.

An occupier of land other than the owner, although entitled to kill hares and rabbits by virtue of the Ground Game Act 1880¹, or because the owner has not reserved sporting rights², is liable to a penalty not exceeding level 1 on the standard scale³ if in the exercise of this right he uses firearms between the expiration of the first hour after sunset and the commencement of the last hour before sunrise, unless he does so with the written authorisation of a person authorised to take and kill ground game on the land⁴.

In Greater London, it is also an offence, similarly punishable, for such a person to employ poison for the purpose of killing ground game⁵.

1 As to the rights conferred by the Ground Game Act 1880 see PARA 772.

2 *Saunders v Pitfield* (1888) 58 LT 108, DC; *Waters v Phillips* [1910] 2 KB 465, DC.

3 As to the standard scale see PARA 738 note 1.

4 Ground Game Act 1880 s 6 (amended by the Prevention of Damage by Rabbits Act 1939 ss 5(2), 6(3); the Pests Act 1954 s 15(2), Schedule; the Criminal Law Act 1977 s 31(6); and by virtue of the Criminal Justice Act 1982 s 46). The prohibition does not extend to the owner of the land, whether or not he is in occupation (*Smith v Hunt* (1885) 54 LT 422, DC), or to any person not in occupation who is entitled by grant or licence from the owner to kill hares and rabbits (*May v Waters* [1910] 1 KB 431, DC; *Leworthy v Rees* (1913) 109 LT 244, DC). Additionally, notwithstanding this provision, the occupier of any land himself, or one other person authorised by him under the Ground Game Act 1880 s 1 (see PARA 775), may use firearms for killing ground game thereon during the prohibited period if (except where he has the exclusive right) the occupier has the written authority of the other person or one of the other persons entitled to kill and take the ground game: Wildlife and Countryside Act 1981 s 12, Sch 7 para 1.

5 Ground Game Act 1880 s 6 (as amended: see note 4, save that the amendment made by the Prevention of Damage by Rabbits Act 1939 does not apply in Greater London). See also PARA 864.

UPDATE

763-778 Owners' and Tenants' Rights

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(1) OWNERS' AND TENANTS' RIGHTS/ (ii) Tenants' Rights/A. IN GENERAL/768. Shooting tenant's rights.

768. Shooting tenant's rights.

The shooting tenant may have obtained his rights over game:

- 16 (1) from the owner-occupier; or
- 17 (2) from an owner who has let his land but reserved his shooting rights; or
- 18 (3) from an occupying tenant where the rights have not been reserved.

In all these cases the shooting tenant may have either the right to shoot the game or general shooting and sporting rights¹. Subject to this he takes, in cases (1) and (2), precisely those rights which the owner himself would have had. In case (1), however, the owner retains his occupier's rights under the Ground Game Act 1880². An owner-occupier or tenant who infringes the shooting tenant's rights by pursuing, killing or taking the game commits an offence for which he may be prosecuted³, but an owner not in occupation who does so is merely liable to a civil claim for breach of contract. The grantee of exclusive sporting rights has a claim against anyone whose acts interfere with his enjoyment of them⁴.

The right to kill and carry away game is not a mere licence, but a profit à prendre⁵, and, being an incorporeal hereditament, should be granted by deed⁶, though on a verbal letting of lands the owner can reserve the game to himself⁷. An agreement for the enjoyment of such a right should be in writing⁸, but in the absence of writing it may be enforceable on the ground of part performance⁹. If there has been actual enjoyment under a parol grant of a right of shooting¹⁰ the rent can be recovered in a claim for use and occupation, and the tenant is liable under the stipulations in the grant¹¹. Where the lease is by deed, the benefit of a covenant by the tenant, such as a covenant to leave the land as well stocked with game as at the time of the demise, runs with the reversion¹². A yearly tenancy of sporting rights may be created by payment of rent, but the tenant is only entitled to a reasonable notice to quit, and not to the customary six months' notice¹³.

1 See PARA 765 text to note 5.

2 *Anderson v Vicary* [1900] 2 QB 287, CA. As to these rights see PARA 763.

3 See the Game Act 1831 s 12; and PARA 765 text and note 8. A shooting tenant who prosecutes must prove his right to the game strictly by producing the deed granting it to him: *Barker v Davis* (1865) 34 LJMC 140.

4 *Fitzgerald v Firbank* [1897] 2 Ch 96, CA; *Nicholls v Ely Beet Sugar Factory* [1931] 2 Ch 84.

5 *Wickham v Hawker* (1840) 7 M & W 63; *Ewart v Graham* (1859) 7 HL Cas 331; *Webber v Lee* (1882) 9 QBD 315, CA; *Lowe v Adams* [1901] 2 Ch 598. As to profits à prendre see **EASEMENTS AND PROFITS A PRENDRE**.

6 Law of Property Act 1925 ss 52(1), 205(1)(ix); *Bird v Higginson* (1837) 6 Ad & El 824; *Brigstocke v Rayner* (1875) 40 JP 245. As to the conveyance of incorporeal hereditaments by deed see **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 14. An invalid lease capable of specific enforcement may, however, operate as an agreement for a lease under the doctrine of *Walsh v Lonsdale* (1882) 21 ChD 9, CA: see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 117. A lessee who has had the benefit of a lease which is not made by deed cannot set up the want of a deed as a defence to a claim on the covenants: *Adams v Clutterbuck* (1883) 10 QBD 403; cf *Thomas v Fredericks* (1847) 10 QB 775. Where there is an agreement not made by deed letting shooting rights a landlord may be restrained from interfering with the exercise of those rights pending the execution of a lease: *Frogley v Earl of Lovelace* (1859) John 333.

7 *Jones v Williams and Roberts* (1877) 46 LJMC 270.

8 *Webber v Lee* (1882) 9 QBD 315, CA.

9 See *McManus v Cooke* (1887) 35 ChD 681; and *Mason v Clarke* [1955] AC 778, [1955] 1 All ER 914, HL.

10 *Tomlinson v Day* (1821) 2 Brod & Bing 680; *Dawes v Dowling* (1874) 31 LT 65.

11 See *Adams v Clutterbuck* (1883) 10 QBD 403.

12 *Hooper v Clark* (1867) LR 2 QB 200.

13 *Lowe v Adams* [1901] 2 Ch 598, where a month's notice determining a shooting tenancy, given at the end of the season, was held to be sufficient.

UPDATE

763-778 Owners' and Tenants' Rights

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(1) OWNERS' AND TENANTS' RIGHTS/ (ii) Tenants' Rights/A. IN GENERAL/769. Alterations to land affecting shooting rights.

769. Alterations to land affecting shooting rights.

In the absence of any special covenants, the grantor of shooting rights is not precluded from using the land in the ordinary and accustomed way, having regard to its character at the date of the grant¹. Thus, in the case of farming land, he cannot be prevented from altering the course of husbandry², cutting down timber or underwood, or doing any other act falling within the ordinary course of estate management³. But any act done with the intention of injuring the rights granted⁴, or any user of the land which does not fall within the ordinary course of its management, or which works a substantial change in its character is, if it substantially injures the rights granted, a derogation from the grant and a breach of the usual covenant for quiet enjoyment⁵.

Where an accident, such as a fire, threatens damage to his shooting rights, the shooting tenant is entitled to adopt such means for the preservation of his rights as are reasonably necessary⁶.

¹ *Jeffryes v Evans* (1865) 19 CBNS 246; *Gearns v Baker* (1875) 10 Ch App 355; *Peech v Best* [1931] 1 KB 1, CA.

² *Jeffryes v Evans* (1865) 19 CBNS 246.

³ *Gearns v Baker* (1875) 10 Ch App 355.

⁴ *Jeffryes v Evans* (1865) 19 CBNS 246; *Bird v Great Eastern Rly Co* (1865) 19 CBNS 268; *Gearns v Baker* (1875) 10 Ch App 355.

⁵ *Dick v Norton* (1916) 85 LJ Ch 623, where, although an interlocutory injunction to restrain the grantor from cutting down all the timber for commercial purposes was refused, damages were recovered at the trial; *Peech v Best* [1931] 1 KB 1, CA, where a substantial portion of the land was sold for the purpose of erecting racing stables. See also *Wenner v Morris* (1935) 79 Sol Jo 252 (use of land for gliding flights). The decision of Jessel MR in *Pattison v Gilford* (1874) LR 18 Eq 259 was apparently distinguished on the basis that there the land was sold expressly subject to shooting rights, that no immediate building activity was threatened and, possibly, by the application of the de minimis rule: *Peech v Best* [1931] 1 KB 1, CA.

⁶ *Cope v Sharpe (No 2)* [1912] 1 KB 496, CA. As to trespass by dogs see PARA 904.

UPDATE

763-778 Owners' and Tenants' Rights

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(1) OWNERS' AND TENANTS' RIGHTS/ (ii) Tenants' Rights/B. AGRICULTURAL TENANTS' RIGHTS/770. Agricultural tenant's rights generally.

B. AGRICULTURAL TENANTS' RIGHTS

770. Agricultural tenant's rights generally.

An agricultural tenant in occupation of land on which the sporting rights are not reserved has the same rights over game as an owner-occupier¹, save that with one exception he may not kill ground game at night with a gun². This restriction does not, however, apply where the right to kill and take rabbits has been expressly conferred on him³. He may grant his rights, including the right to take and kill the ground game, to a shooting tenant⁴, but such grant will not preclude him from exercising his concurrent right to kill ground game himself⁵.

1 See PARA 763.

2 See the Ground Game Act 1880 s 6; and PARA 767 text and notes 4, 5 (where the exception is also noted).

3 *May v Waters* [1910] 1 KB 431, DC; *Leworthy v Rees* (1913) 109 LT 244, DC.

4 *Morgan v Jackson* [1895] 1 QB 885, DC.

5 *Morgan v Jackson* [1895] 1 QB 885, DC.

UPDATE

763-778 Owners' and Tenants' Rights

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(1) OWNERS' AND TENANTS' RIGHTS/ (ii) Tenants' Rights/B. AGRICULTURAL TENANTS' RIGHTS/771. Agricultural tenant's rights where sporting rights reserved.

771. Agricultural tenant's rights where sporting rights reserved.

An agricultural tenant in occupation of land on which the sporting rights have been reserved has certain statutory rights in regard to game in the interests of good husbandry and for the better security of the capital and labour invested by him in the cultivation of the soil¹. They comprise direct rights in the case of ground game, and indirect rights in the case of game generally. The rights are conferred in the one case by the Ground Game Acts², and in the other by the Agricultural Holdings Act 1986³.

1 See the Ground Game Act 1880 long title.

2 See PARA 772 note 1.

3 See by the Agricultural Holdings Act 1986 s 20; see PARA 776. Note that these provisions are not reproduced in relation to farm business tenancies created under the Agricultural Tenancies Act 1995 (see **AGRICULTURAL LAND** vol 1 (2008) PARA 301 et seq), although such tenancies frequently incorporate terms from the Agricultural Holdings Act 1986.

UPDATE

763-778 Owners' and Tenants' Rights

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(1) OWNERS' AND TENANTS' RIGHTS/ (ii) Tenants' Rights/B. AGRICULTURAL TENANTS' RIGHTS/772. Rights over ground game.

772. Rights over ground game.

The occupier's right under the Ground Game Acts¹ is to kill and take ground game² on the land in his occupation, whether or not any other person is entitled also to kill and take ground game on the same land³. The right is incidental to and inseparable from his occupation, so that he cannot be divested of it in any way⁴. Any agreement, condition or arrangement is void⁵ which purports to alienate it from him or which gives him an advantage in consideration of his forbearing to exercise it or imposes any disadvantage on him in consequence of his exercising it⁶.

A person with a mere right of common is not an occupier within the Ground Game Acts⁷.

1 The Ground Game Act 1880 and the Ground Game (Amendment) Act 1906.

2 As to the meaning of 'ground game' see PARA 763 note 3.

3 See the Ground Game Act 1880 s 1. The offence created by s 6 (see PARA 767) applies.

4 See the Ground Game Act 1880 ss 1, 3, 7.

5 See *Sherrard v Gascoigne* [1900] 2 QB 279, DC, where the tenant was induced to leave ground game unshot by the landlord's promise to compensate him for damage done by it; it was held that the agreement was void and the tenant could not recover compensation under it.

6 Ground Game Act 1880 s 3. Though clauses in an agreement are void as contravening this provision the rest of the agreement may be good: see *Beardmore v Meakin* (1884) 20 LJNC 8; *Stanton v Brown* [1900] 1 QB 671, DC. In *Morgan v Jackson* [1895] 1 QB 885, DC, it was held that this provision was directed only against occupiers of land depriving themselves, in collusion with their landlords, of their statutory right to kill game.

7 Ground Game Act 1880 s 1 proviso (2).

The Game Act 1831 does not give any rights over game to owners of cattles or rights of common: see s 10 (amended by the Statute Law Revision (No 2) Act 1888; and by SI 2007/2007); and *Cooper v Marshall* (1757) 1 Burr 259; **COMMONS** vol 13 (2009) PARA 560.

UPDATE

763-778 Owners' and Tenants' Rights

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Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(1) OWNERS' AND TENANTS' RIGHTS/ (ii) Tenants' Rights/B. AGRICULTURAL TENANTS' RIGHTS/773. Sublessee's rights.

773. Sublessee's rights.

The right to kill and take ground game is granted expressly to occupiers as such. Hence, if a tenant sublets his land, he parts with the ground and the sublessee acquires it for the duration of the sublease. The right to kill ground game on land is withheld from anyone who merely has a right of common over it¹, and from anyone who is in occupation for the purpose of grazing or pasturage of sheep, cattle or horses for a period of nine months or less².

¹ Ground Game Act 1880 s 1 proviso (2); cf the Game Act 1831 s 10 (amended by the Statute Law Revision (No 2) Act 1888; and SI 2007/2007); and see PARA 772 note 7.

² Ground Game Act 1880 s 1 proviso (2). The precise language of this exception leaves in some doubt the question whether it covers occupation for the purpose of grazing other animals, eg goats or pigs.

UPDATE

763-778 Owners' and Tenants' Rights

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Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(1) OWNERS' AND TENANTS' RIGHTS/ (ii) Tenants' Rights/B. AGRICULTURAL TENANTS' RIGHTS/774. Occupier's rights over moorland.

774. Occupier's rights over moorland.

In the case of moorland and uninclosed non-arable land, except detached portions of either which are less than 25 acres in extent and adjoin arable lands, the time at which the occupier's right to kill ground game may be exercised is limited: between 11 December of one year and 31 March of the next year, inclusive, the right may be exercised and ground game may be killed in any legal way¹; between 1 April and 31 August, inclusive, the right is suspended altogether; but between 1 September and 10 December, inclusive, the right may be exercised otherwise than by the use of firearms², and as between those latter dates a valid agreement may be made between the occupier and the owner or shooting tenant for the joint exercise of the right or for its exercise for their joint benefit³.

Moreover, occupiers of lands on which the right to take and kill ground game is vested by lease, contract of tenancy or other contract bona fide made for valuable consideration before 7 September 1880⁴ in some other person, are not entitled to exercise their right until the determination of that contract, and in places where before that date any person other than the landlord, lessor or occupier became entitled by virtue of any charter or Act to a special right of killing or taking ground game, the occupier is precluded from any action that might affect that special right⁵.

1 Ground Game Act 1880 s 1 proviso (3).

2 See the Ground Game (Amendment) Act 1906 s 2. As to trapping and other methods of destruction see PARA 1020 et seq.

3 See the Ground Game (Amendment) Act 1906 s 3.

4 Ie the date of the passing of the Ground Game Act 1880.

5 See the Ground Game Act 1880 s 5. When a tenant held land under a tenancy from year to year, but there was an agreement made before 7 September 1880 for a 14-year lease to be granted at the expiration of the tenancy, and that lease contained a covenant reserving rights over ground game to the landlord, it was held that the rights to the ground game remained vested in the landlord until the expiration of that year's lease: *Allhusen v Brooking* (1884) 26 ChD 559; cf *Hassard v Clark* (1884) 13 LR 1r 391.

UPDATE

763-778 Owners' and Tenants' Rights

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Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(1) OWNERS' AND TENANTS' RIGHTS/ (ii) Tenants' Rights/B. AGRICULTURAL TENANTS' RIGHTS/775. Who may exercise right.

775. Who may exercise right.

In all places the exercise of the right¹ is confined to the occupier and to persons duly authorised by him in writing². Where there are joint tenants, each of them is at liberty to exercise the right³.

The written authority need not be in any prescribed form, and no provision requires it to be either signed or dated, but no doubt it should state the name of the person authorised and indicate the place in regard to which the authority is given. Every person so authorised by the occupier may be required by any person having a concurrent right to take and kill the ground game on the land, or by any person authorised by the latter in writing, to produce the authority, and if he fails to do so he will not be deemed to be an authorised person⁴.

The only persons who may be authorised to kill ground game are:

- 19 (1) members of the occupier's household⁵ resident⁶ on the land in his occupation⁷;
- 20 (2) persons in his ordinary service on such land⁸; and
- 21 (3) any one other person bona fide employed by him for reward⁹ in the taking and destruction of ground game¹⁰.

Only one other person besides the occupier himself may be authorised by him to exercise his rights by killing the ground game with firearms¹¹.

1 See PARA 772 text to note 3.

2 Ground Game Act 1880 s 1 proviso (1). A person who kills ground game on the occupier's verbal instruction only is a trespasser: cf *Richardson v Maitland* (1897) 34 SLR 426.

3 Cf *Assessed Tax Appeal Case (No 1473)* (1840) 6 JP 186; *Morrison v Anderson* 1913 JC 114. If they authorise other persons, presumably they must do so jointly.

4 Ground Game Act 1880 s 1 proviso (1)(c).

5 The household will include household servants, namely, those who live and board at his house but presumably not such as live in other houses on the farm: cf *Re Drax, Savile v Yeatman* (1887) 57 LT 475; *Ogle v Morgan* (1852) 1 De GM & G 359.

6 A man's residence has been described as the place where he eats, drinks and sleeps, or where his family or servants eat, drink and sleep: *R v North Curry (Inhabitants)* (1825) 4 B & C 953 at 959 per Bayley J. The question is one of fact in each case, but a person invited to stay for a week and shoot rabbits was held by a Scottish court to satisfy the condition: *Stuart v Murray* (1884) 12 R 9, Ct of Sess. It is not necessary that the occupier should reside there himself: cf *R v North Curry (Inhabitants)* (1825) 4 B & C 953.

7 This would seem to limit the authority given to this class of person to the farm on which they were resident, so that if a tenant held two or more farms the household resident on each could take and kill the ground game on that farm, but not on the others.

8 'Ordinary service' presumably means regular service, so that casual labour taken on for a week or two, as for harvest, would be excluded. Moreover, servants who, however regularly employed, do not find their customary work on the land would also be excluded. There is otherwise no limit to the number of persons who might be included in this class.

9 'Employed' includes an employment, direct or indirect: *Mason v Clarke* [1954] 1 QB 460 at 468, [1954] 1 All ER 189 at 192, CA, per Denning LJ; revsd without reference to this point [1955] AC 778, [1955] 1 All ER 914, HL. This introduction of a stranger on to the land is dissociated from any idea of sport to be had out of killing the ground game. It must be a business transaction (eg a person employed as a professional rabbit-catcher). It is no doubt possible that a friend or servant might be employed if he were definitely paid for it, but whereas in the case of the rabbit-catcher the fact of his being allowed to keep all or some of the rabbits taken would probably be considered bona fide employment for reward (cf *Bruce v Prosser* (1898) 35 SLR 433, commented on in (1898) 62 JP 466, where it was so decided by the Scottish courts), a similar gift to a friend asked to come and shoot could hardly be so construed. Definite employment for the purpose is required; verbal instructions are insufficient: see note 2.

10 Ground Game Act 1880 s 1 proviso (1)(b). As to the power of the Secretary of State and the Welsh Ministers to authorise other persons to kill ground game under the Pests Act 1954 s 1(4) see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1023.

11 Ground Game Act 1880 s 1 proviso (1)(a).

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763-778 Owners' and Tenants' Rights

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Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(1) OWNERS' AND TENANTS' RIGHTS/ (ii) Tenants' Rights/B. AGRICULTURAL TENANTS' RIGHTS/776. Compensation for damage by game.

776. Compensation for damage by game.

In addition to the protection from damage by hares and rabbits which is given to an agricultural tenant by the right to shoot them under the Ground Game Act 1880¹, he is entitled to compensation from his landlord in certain cases for damage done to his crops by deer, pheasants, partridges, grouse and black game². Any agreement to the contrary or in limitation of this compensation is void³. Where the right to kill and take game is vested in some person other than the landlord, the landlord is entitled to an indemnity from that person against all claims by the tenant for compensation for damage by such game⁴.

1 See PARA 772.

2 This compensation and the circumstances in which it is payable are provided for under the Agricultural Holdings Act 1986 s 20: see **AGRICULTURAL LAND** vol 1 (2008) PARA 424.

3 See PARAS 765-766.

4 See the Agricultural Holdings Act 1986 s 20; and **AGRICULTURAL LAND** vol 1 (2008) PARA 424. Note that these provisions are not reproduced in relation to farm business tenancies created under the Agricultural Tenancies Act 1995 (see **AGRICULTURAL LAND** vol 1 (2008) PARA 301 et seq), although such tenancies frequently incorporate terms from the Agricultural Holdings Act 1986.

UPDATE

763-778 Owners' and Tenants' Rights

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Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(1) OWNERS' AND TENANTS' RIGHTS/ (iii) Rights Ratione Privilegii/777. Nature of right.

(iii) Rights Ratione Privilegii

777. Nature of right.

In certain cases the right to kill or take game may be claimed *ratione privilegii* without reference to the occupation of the land on which the game is found.

The ancient right of franchise to kill or take game without reference to the occupation of the land whereon the game is found, whose origin was a grant by the Crown in the exercise of the royal prerogative or by prescription supposing such a grant, no longer exists¹. In so far as the game rights of the lord of the manor were founded in free warren, which was a franchise of this nature, they also are now abolished². There still remains, however, the manorial right to shoot and take game *ratione privilegii*³.

1 Wild Creatures and Forest Laws Act 1971 s 1(1)(b). The principal franchises of this nature were those of forest or chase and free warren.

2 Wild Creatures and Forest Laws Act 1971 s 1(1)(b).

3 See PARA 778.

UPDATE

763-778 Owners' and Tenants' Rights

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Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(1) OWNERS' AND TENANTS' RIGHTS/ (iii) Rights Ratione Privilegii/778. Lord of the manor.

778. Lord of the manor.

The right of the lord of the manor to shoot or take game on the uninclosed waste land of the manor is a right which belongs to him by virtue of his ownership of the soil¹. He may accordingly grant the right as a profit à prendre to another separately from the ownership of the soil². Where, however, waste lands have been inclosed³ and have been allotted to the commoners as their freehold, prima facie the right of sporting belongs to them as incident to their property in the soil⁴.

1 As to the lord of the manor's game rights see **COMMONS** vol 13 (2009) PARA 560. Rights to take game, fish and fowl were preserved by the Law of Property Act 1922 s 128(2), Sch 12 para (5), notwithstanding the enfranchisement of copyhold land by s 128; see **REAL PROPERTY** vol 39(2) (Reissue) PARA 35.

2 *Ewart v Graham* (1859) 7 HL Cas 331; *Wickham v Hawker* (1840) 7 M & W 63, adopted in *Musgrave v Forster* (1871) LR 6 QB 590. The Game Act 1831 gives no interest in game to the owners of cattles or rights of common (see **COMMONS** vol 13 (2009) PARA 560) and does not prejudice the rights of lords of the manor, who are to have the game on the wastes: s 10 (amended by the Statute Law Revision (No 2) Act 1888; and by SI 2007/2007). A person with a mere right of common is not an occupier entitled to kill ground game under the Ground Game Act 1880: s 1 proviso (2); and see PARA 772 text and note 7. As to profits à prendre generally see **EASEMENTS AND PROFITS A PRENDRE**.

3 As to inclosure see **COMMONS** vol 13 (2009) PARA 418 et seq.

4 As to the effect of inclosure on sporting rights see **OPEN SPACES AND COUNTRYSIDE**.

UPDATE

763-778 Owners' and Tenants' Rights

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/ (2) CIVIL REMEDIES FOR INFRINGEMENT OF RIGHTS/(i) Remedies at Law/779. Infringements of private rights over game are in the nature of trespass.

(2) CIVIL REMEDIES FOR INFRINGEMENT OF RIGHTS

(i) Remedies at Law

779. Infringements of private rights over game are in the nature of trespass.

Private rights over game, whatever their origin, are essentially local in character, and the principle upon which their security depends is that of the law of trespass¹. Trespass is committed by any person who enters the land of another without authority to do so². Such an act requires no motive, such as the search for or pursuit of game, to supply a ground of claim to the injured party; but while the right to claim is open to any occupier whose ground is trespassed on, it is of special importance to the holder of rights over game, as it is the means whereby the game on land in his occupation is protected from disturbance³.

The ordinary remedy for trespass for the aggrieved party is to seek (1) an injunction to restrain the alleged trespasser from committing any further acts of trespass; (2) a declaration of the plaintiff's rights; and (3) damages⁴. Entry on land by any unauthorised person renders him liable to such a claim. If, therefore, a person standing on his own ground shoots game which falls upon his neighbour's land, he cannot enter that neighbour's land to gather it without committing an act of trespass⁵; again, if a person while hunting enters the land of another without his consent, he commits an act of trespass⁶.

Further, the entry need not be personal in order to give rise to a claim. A man who does not himself enter, but invites or authorises others to do so, is liable for trespass⁷. The mere firing of a gun into the land of another⁸, or the sending of a dog on to such land in pursuit of game⁹, is also ground for a claim in trespass.

In addition to his right to claim in trespass, an aggrieved party has the right to remove a trespasser who declines to leave his land, provided that he does not use more force than is necessary¹⁰.

1 See PARA 718.

2 *Cubitt v Porter* (1828) 8 B & C 257; see generally **TORT** vol 97 (2010) PARA 562 et seq.

3 Ie if he is an occupier. A shooting tenant not in occupation cannot claim unless the occupier is joined as plaintiff, but he has the right to take criminal proceedings: see PARA 785 et seq.

4 Damages are as a rule only awarded to the extent to which the aggrieved party has actually suffered loss, but where the trespass is aggravated by wilful annoyance or other special circumstances, they may be given on a more generous scale; see *Merest v Harvey* (1814) 5 Taunt 442, where damages of £500 were awarded, not in consequence of the damage done, but expressly on account of the attendant circumstances, the defendant having persisted in joining a shooting party unasked. As to aggravation of damage, and for the distinction between aggravated and exemplary damages, see **DAMAGES**.

5 See *Tanton v Jervis* (1879) 43 JP 784. As to whether other proceedings can be taken see PARA 785 et seq.

6 *Paul v Summerhayes* (1878) 4 QBD 9, DC; cf, however, *Gundry v Feltham* (1786) 1 Term Rep 334, where it was said that entry could be justified if no more was done than was necessary to kill the fox.

7 *Robinson v Vaughton* (1838) 8 C & P 252; *Baker v Berkeley* (1827) 3 C & P 32, where a master of hounds was held liable for trespass committed by members of the hunt, unless he distinctly desired them not to enter the land. One member of the hunt, not holding an official position, cannot, however, be held liable for the

trespass of other members: *Paget v Birkbeck* (1863) 3 F & F 683. For a full review of the authorities relative to the responsibilities of the master of a hunt see *League against Cruel Sports Ltd v Scott* [1986] QB 240, [1985] 2 All ER 489.

8 See *Pickering v Rudd* (1815) 4 Camp 219. Quaere, as to the firing of a gun over the land of another, *Pickering v Rudd* (1815) 4 Camp 219.

9 *R v Pratt* (1855) 4 E & B 860. The fact of allowing a dog, known to be addicted to chasing, to be at large near the lands of another would render the owner liable in trespass if the dog in fact entered the land: *Read v Edwards* (1864) 17 CBNS 245; cf *Dimmock v Allenby* (1810) cited in 2 Marsh at 582; *Brown v Giles* (1823) 1 C & P 118. As to unauthorised entry by dogs generally see PARA 904 note 1.

10 See generally **TORT** vol 97 (2010) PARA 586; and *Harrison v Duke of Rutland* [1893] 1 QB 142, CA.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/ (2) CIVIL REMEDIES FOR INFRINGEMENT OF RIGHTS/(i) Remedies at Law/780. Trespass on the highway.

780. Trespass on the highway.

The right of the public over a highway is limited to its use for the purpose of passing and repassing on it, so that a trespass may be committed if the highway is used for the purpose of interfering with sporting rights¹. Consequently the owner of land adjoining the highway who is also owner of the soil of the highway may employ all the means at his disposal for resisting a trespass there that he might use in the case of any land in his occupation².

1 *Harrison v Duke of Rutland* [1893] 1 QB 142, CA; followed in *Hickman v Maisey* [1900] 1 QB 752, CA; and approving *R v Pratt* (1855) 4 E & B 860. As to the criminal offence see PARA 786 text to note 13. As to rights over highways generally see **HIGHWAYS, STREETS AND BRIDGES**.

2 *Harrison v Duke of Rutland* [1893] 1 QB 142, CA.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/ (2) CIVIL REMEDIES FOR INFRINGEMENT OF RIGHTS/(i) Remedies at Law/781. Injury to game rights without entry on land.

781. Injury to game rights without entry on land.

It is possible, without entering upon the land of another, to injure that other's right to the game on that land, but in order to succeed in a claim the injured party must prove that the act was wrongful and was done with the wilful intention of injuring his rights¹. It is not actionable to entice game away from the land of another, but it is actionable deliberately to scare them away from it².

1 *Ibottson v Peat* (1865) 3 H & C 644. A man may also be injured in his trade if he owns a decoy for wild duck, and the birds are wilfully scared by another with intent to injure him: *Keeble v Hickeringill* (1706) 11 East 574n. The intent to injure may be inferred from the circumstances in which the gun, etc, was fired: *Carrington v Taylor* (1809) 11 East 571.

2 *Ibottson v Peat* (1865) 3 H & C 644.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/ (2) CIVIL REMEDIES FOR INFRINGEMENT OF RIGHTS/(ii) Physical Protection against Infringement of Rights/782. Killing or injuring dogs.

(ii) Physical Protection against Infringement of Rights

782. Killing or injuring dogs.

The law permits a person, in clearly defined circumstances, to kill or injure a dog in order to protect livestock¹, and it is a defence to a charge of destroying or damaging a dog² to establish the lawful excuse that it was chasing game and that the defendant reasonably believed that his action was necessary to protect his interest in the game³.

But, it seems, a person acting in such a way in protecting game or other animals *ferae naturae* which have not been either reclaimed or reduced into possession by killing cannot justify what is otherwise an actionable wrong⁴. The old remedy of distress damage feasant, abolished in relation to animals by the Animals Act 1971⁵, was held to apply to dogs⁶, but since the modern remedy of detention and sale of trespassing livestock⁷ does not by definition extend to dogs it is clear that this class of remedy is no longer available in any form applicable to dogs.

1 See the Animals Act 1971 s 9; and PARA 928.

2 See under the Criminal Damage Act 1971 s 1; see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 334.

3 See the Criminal Damage Act 1971 s 5(1)-(3), reversing the decision in *Gott v Measures* [1948] 1 KB 234, [1947] 2 All ER 609, DC.

4 *Vere v Lord Cawdor* (1809) 11 East 568 per Le Blanc J. Cf *Taylor v Newman* (1863) 4 B & S 89 at 91 per Blackburn J, commenting on *Vere v Lord Cawdor* (1809) 11 East 568. Two county court decisions, however, have taken the same line as Le Blanc J: see 45 JP 83, and *Brown v Belfast Water Comrs* (1912) 47 ILT 153; and in view of the express omission from the Animals Act 1971 ss 9, 11 of any reference to game it is submitted that this is correct.

5 Animals Act 1971 s 7(1).

6 *Bunch v Kennington* (1841) 1 QB 679.

7 See the Animals Act 1971 s 7; and PARAS 758-759.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/ (2) CIVIL REMEDIES FOR INFRINGEMENT OF RIGHTS/(ii) Physical Protection against Infringement of Rights/783. Dog spears and traps.

783. Dog spears and traps.

The limitation placed by the law on the killing or injuring of dogs¹ does not extend to prevent the occupier of land from taking measures to protect his game in his absence. He may set dog spears in his woods, and if a dog trespasses, and is injured thereby, he need not prove that his methods were necessary in order to protect his rights to the game, as he was acting within his rights on his own soil². But he must not so use his land as to tempt the dogs of others to destruction; thus if he sets traps baited with strong-smelling meat so near his neighbour's yard, or so near a highway where dogs may lawfully pass, that dogs are irresistibly drawn to the traps, he is liable in damages³.

1 See PARA 782.

2 *Deane v Clayton* (1817) 7 Taunt 489; *Jordin v Crump* (1841) 8 M & W 782.

3 *Townsend v Wathen* (1808) 9 East 277. He would probably now also be liable to prosecution under the Protection of Animals Act 1911 or the Criminal Damage Act 1971: see PARA 817 et seq. As to the protection of animals from poison see PARA 829; for restrictions on the use of protective devices calculated to destroy or harm humans see PARA 802.

UPDATE

783-790 Dog spears and traps ... Claim of right

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/ (2) CIVIL REMEDIES FOR INFRINGEMENT OF RIGHTS/(ii) Physical Protection against Infringement of Rights/784. Barbed wire.

784. Barbed wire.

An occupier of land may make use of barbed wire on his land, but if the barbed wire is so placed on land adjoining a highway that it is likely to be injurious to persons or animals lawfully using the highway¹, it is a nuisance which the local authority may by notice call upon the occupier to remove².

1 Footpaths and bridleways are both types of highway: see the Highways Act 1980 s 329(1); and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 64.

2 Highways Act 1980 s 164. See *Stewart v Wright* (1893) 9 TLR 480, DC. In the Highways Act 1980, 'barbed wire' means wire with spikes or jagged projections: s 164(1)(b). If he fails to comply with the notice a magistrates' court may, on the local authority's complaint, require him to abate the nuisance: s 164(1); see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 373.

UPDATE

783-790 Dog spears and traps ... Claim of right

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(3) CRIMINAL OFFENCES BY INFRINGING GAME RIGHTS/(i) Poaching and Trespass in Pursuit of Game/A. IN GENERAL/785. Criminal proceedings for poaching by day.

(3) CRIMINAL OFFENCES BY INFRINGING GAME RIGHTS

(i) Poaching and Trespass in Pursuit of Game

A. IN GENERAL

785. Criminal proceedings for poaching by day.

The occupier of land and any person having the right to the game, and the gamekeeper and servants of either, and any person authorised by either, may request a trespasser in the daytime¹ in search or pursuit of game², woodcock, snipe or rabbits to quit the land and to give his forename³ and surname and place of abode with a view to a summons being issued against him, and if he wilfully continues or returns upon the land, or refuses to tell his real name and address, or gives such a general description of his place of abode as to be illusory for the purpose of discovery, they may arrest him⁴. If the offender cannot be brought before a justice within 12 hours from the time of his arrest he must be released, but may subsequently be proceeded against by summons or warrant⁵.

A police constable may, similarly, request a trespasser to quit the land and to give his forename⁶, surname and place of abode⁷; and if he has reasonable grounds for suspecting that a person is committing an offence of poaching⁸ on any land⁹ he may enter on that land for the purpose of exercising this power, or for the purpose of arresting him¹⁰.

In addition to the occupier's right to make a civil claim¹¹, a right to prosecute is given to the occupier, the owner of the soil not in occupation, and the person having the right to the game¹², and to any informer¹³.

Where, however, a prosecution has been instituted for trespass in pursuit of game by day, no civil claim for trespass may be brought against the offender for the same act of trespass by anyone at whose instance or with whose concurrence or assent the prosecution was instituted¹⁴.

1 Daytime runs from the beginning of the last hour before sunrise to the expiration of the first hour after sunset: Game Act 1831 s 34 (amended by the Statute Law Revision (No 2) Act 1888). See also PARA 791 note 4; and **TIME** vol 97 (2010) PARA 313.

2 As to the meaning of 'game' see PARA 717.

3 The Game Act 1831 ss 31, 31A use the term 'Christian name'.

4 Game Act 1831 s 31 (amended by the Statute Law Revision (No 2) Act 1888; the Protection of Birds Act 1954 s 15(2), Sch 6; the Wild Creatures and Forest Laws Act 1971 s 1(4), Schedule; and the Statute Law (Repeals) Act 1989). The penalty for refusal to give name and address, for giving an illusory description of place of abode or for wilfully continuing or returning upon the land, is a fine not exceeding level 1 on the standard scale: Game Act 1831 s 31 (amended by the Criminal Law Act 1977 s 31(6); and by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 738 note 1.

The better view seems to be that it is not necessary in order to justify arrest that the trespasser should have been required both to give his real name and address and to quit the land: cf *R v Prestney* (1849) 3 Cox CC 505 per Parke B, with *R v Long* (1836) 7 C & P 314 per Williams J. It is, however, necessary that the trespasser, before being arrested under these provisions, should be asked both for his name and for his address: *R v Wilson* [1955] 1 All ER 744, [1955] 1 WLR 493, CCA. Though a person unlawfully arrested under these provisions cannot be convicted under the Offences against the Person Act 1861 s 38 of assault with intent to resist arrest

(see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 737), he may be convicted of common assault if the jury is of opinion that he used more force than necessary to avoid the unlawful arrest: see *R v Wilson* [1955] 1 All ER 744, [1955] 1 WLR 493, CCA; and cf *R v Day and Cox* (1870) 22 LT 452, CCR. Generally as to conviction for an offence other than that charged see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1335.

5 Game Act 1831 s 31 proviso. The reason for his not being brought before the justice must be the justice's absence, the distance of the justice's residence, or some other reasonable cause: s 31 proviso.

6 See note 3.

7 Game Act 1831 s 31A (added by the Police and Criminal Evidence Act 1984 s 119(1), Sch 6 para 1).

8 lie under the Game Act 1831 s 30: see PARA 786.

9 'Land' includes land belonging to Her Majesty in right of the Crown or Duchy of Lancaster or in her private capacity, land belonging to the Duchy of Cornwall, and land belonging to a government department or held in trust for Her Majesty for the purposes of such a department: Game Laws (Amendment) Act 1960 s 2(2). The power of entry is not, however, exercisable in relation to land occupied or managed by specified public authorities for the purposes of defence, aviation or atomic energy, by the service authorities of a visiting force as defined by the Visiting Forces Act 1952 s 12(1), or by any headquarters or organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964: see the Game Laws (Amendment) Act 1960 s 2(3) (amended by SI 1965/1536).

10 Game Laws (Amendment) Act 1960 s 2(1)(a), (b) (amended by the Police and Criminal Evidence Act 1984 Sch 6 para 10; and the Serious Organised Crime and Police Act 2005 s 111, Sch 7 para 52(2)).

11 See PARA 779.

12 See the Game Act 1831 s 30; and PARA 786.

13 *Midelton v Gale* (1838) 8 Ad & El 155; *Morden v Porter* (1860) 7 CBNS 641; see PARA 798.

14 Game Act 1831 s 46 (amended by the Statute Law Revision (No 2) Act 1888; and the Statute Law Revision Act 1958). To bar a claim it is not necessary that the prosecution be successful: *Robinson v Vaughton* (1838) 8 C & P 252. There is no corresponding provision in the Night Poaching Acts of 1828 and 1844, so it would appear that a prosecution for night poaching is no bar to a claim.

UPDATE

783-790 Dog spears and traps ... Claim of right

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(3) CRIMINAL OFFENCES BY INFRINGING GAME RIGHTS/(i) Poaching and Trespass in Pursuit of Game/A. IN GENERAL/786. Offence of poaching by day.

786. Offence of poaching by day.

It is an offence for any trespasser to enter or be upon land¹ in the daytime² in search or pursuit of game or woodcock, snipe or rabbits, and an offender is liable upon conviction before one or more justices of the peace to a penalty not exceeding level 3 on the standard scale³.

It is not necessary to prove that the search or pursuit was in order to kill game at the time⁴. There must, however, be an actual entry by some person on the land⁵. To discharge a gun into or over the land of a neighbour does not therefore in itself constitute the offence described⁶. Where, however, an entry is made for the purpose of gathering a bird or beast named above which, before being shot, is on or rises from that land, an offence is committed⁷.

If a bird rises on the shooter's own ground and is shot at by him while in the air, either over his own or his neighbour's land, and the shooter attempts to gather it on his neighbour's land, then if the bird is dead or unable to escape, so that no fresh effort is required to gather it, no criminal offence is committed⁸, but it is otherwise if the bird is merely wounded⁹. The same position would result in the case of ground game started on the shooter's own land and shot at by him before it crossed the boundary, and probably even if shot at after it crossed¹⁰.

A shooter who stands upon his neighbour's land to shoot game that is being beaten out of a boundary hedge by a person on the shooter's own land commits an offence within this provision¹¹.

No offence is committed by any lord or steward of the Crown of any manor, lordship or royalty, or reputed manor, lordship or royalty, or by any gamekeeper appointed by him within its limits¹². But a person who uses a highway, the soil of which is the property of another, to shoot at birds flushed on that other ground, commits an offence¹³, and where one person from a highway assists another who is trespassing in pursuit of game, both commit an offence¹⁴.

1 To enter and be upon any land constitutes one offence: *R v Mellor* (1833) 2 Dowl 173.

2 As to the meaning of 'daytime' see PARA 785 note 1.

3 Game Act 1831 s 30 (amended by the Statute Law Revision (No 2) Act 1888; the Protection of Birds Act 1954 s 15(2), Sch 6; the Statute Law (Repeals) Act 1989; by virtue of the Criminal Justice Act 1982 ss 37, 38, 46; and by the Criminal Justice and Public Order Act 1994 s 168(1), Sch 9, para 1(2)). As to the standard scale see PARA 738 note 1. If the offender is tried before one justice only, the maximum penalty is £1: Magistrates' Courts Act 1980 s 121(5) (amended by the Courts Act 2003 s 109(1), (3), Sch 8 para 237(1), (4), Sch 10). As to trial before justices generally see **MAGISTRATES**. As to search of a person and forfeiture of game, guns, traps, etc see PARA 795.

4 *Stiff v Billington* (1901) 84 LT 467, DC; *Burrows v Gillingham* (1893) 57 JP 423.

5 *R v Alsopp* (1691) 1 Show 339; *R v Pratt* (1855) 4 E & B 860; *Mayhew v Wardley* (1863) 14 CBNS 550; and cf *Horn v Raine* (1898) 67 LQB 533; *Pratt v Martin* [1911] 2 KB 90.

6 Cf PARA 779, which relates to civil remedies.

7 *Osmond v Meadows* (1862) 26 JP 439. This is so even if the attempt to gather the bird were made some hours after it had been shot, and it had in fact already been gathered by another: *Horne v Raine* (1898) 67 LQB 533, where the shooting and the attempt to gather the bird were held to be one continuous act. It is possible that, if the game were shot by day and not gathered until night, no offence would be committed, for this offence is trespassing by day, and in this case there would be no entry in the daytime, while as the game is dead there

would be no offence under the Night Poaching Acts 1828 and 1844, and if there was always in the poacher's mind the intention to gather there could be no theft: *R v Townley* (1871) LR 1 CCR 315.

8 *Kenyon v Hart* (1865) 6 B & S 249. This is so even if the bird were killed some days before: *Tanton v Jervis* (1879) 43 JP 784. Cf *Nicoll v Strachan* (1912) 50 SLR 120.

9 In this case the bird is in no sense reduced into possession, and it therefore becomes the potential property of the person on whose land it alighted: see PARA 718.

10 *Kenyon v Hart* (1865) 6 B & S 249 at 255 per Blackburn J; cf *Sutton v Moody* (1697) 1 Ld Raym 250.

11 *Philpot v Bugler* (1890) 54 JP 646, DC.

12 Game Act 1831 s 35 (amended by the Statute Law Revision (No 2) Act 1888; the Wild Creatures and Forest Laws Act 1971 s 1(4), Schedule; and the Hunting Act 2004 s 13, Sch 2 para 1, Sch 3). Permission given orally by the landlord or person entitled to the game justifies fresh pursuit on an adjoining field: *Jones v Williams and Roberts* (1877) 46 LJMC 270, DC.

13 *R v Pratt* (1855) 4 E & B 860.

14 *Stacey v Whitehurst* (1865) 18 CBNS 344; and see *R v Passey* (1836) 7 C & P 282; and *R v Whittaker* (1848) 2 Car & Kir 636, CCR.

UPDATE

783-790 Dog spears and traps ... Claim of right

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(3) CRIMINAL OFFENCES BY INFRINGING GAME RIGHTS/(i) Poaching and Trespass in Pursuit of Game/A. IN GENERAL/787. Poaching by day in company.

787. Poaching by day in company.

Where five or more persons trespass in the daytime¹ in pursuit of game, woodcock, snipe or rabbits, each of them is liable to a penalty not exceeding level 4 on the standard scale².

If any of the number is armed with a gun, and he or any of the others by violence, intimidation or menace prevents or endeavours to prevent the approach of any person authorised³ in that behalf for the purpose of requiring them to quit the land or declare their names and addresses, each person preventing or endeavouring to prevent such approach, and every person aiding or abetting him or them, is liable upon conviction before two or more justices to a penalty not exceeding level 5 on the standard scale in addition to any other penalty which he or they may have incurred⁴.

A person convicted of an offence under these provisions may be liable to the forfeiture of any vehicle of his used in connection with the offence⁵.

1 As to the meaning of 'daytime' see PARA 785 note 1.

2 Game Act 1831 s 30 (amended by the Statute Law Revision (No 2) Act 1888; the Protection of Birds Act 1954 s 15(2), Sch 6; the Statute Law (Repeals) Act 1989; by virtue of the Criminal Justice Act 1982 ss 37, 38, 46; and by the Criminal Justice and Public Order Act 1994 s 168(1), Sch 9 para 1(2)). As to the standard scale see PARA 738 note 1. As to search of persons and forfeiture of game, guns, traps, etc see PARA 795.

3 As to who is authorised see PARA 785.

4 Game Act 1831 s 32 (amended by the Statute Law Revision (No 2) Act 1888; the Protection of Birds Act 1954 Sch 6; the Wild Creatures and Forest Laws Act 1971 s 1, Schedule; the Criminal Law Act 1977 s 31(6); by virtue of the Criminal Justice Act 1982 ss 37, 46; and by the Statute Law (Repeals) Act 1989; and the Criminal Justice and Public Order Act 1994 Sch 9 para 1(3)).

The defendants may be charged together or separately: *R v Littlechild* (1871) LR 6 QB 293. A defendant may be charged with aiding or abetting only: *Stacey v Whitehurst* (1865) 18 CBNS 344.

5 See PARA 796.

UPDATE

783-790 Dog spears and traps ... Claim of right

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(3) CRIMINAL OFFENCES BY INFRINGING GAME RIGHTS/(i) Poaching and Trespass in Pursuit of Game/A. IN GENERAL/788. Defences.

788. Defences.

A person charged with the statutory offence of trespassing in the daytime in search or pursuit of game or woodcock, snipe or rabbits¹ may prove by way of defence any matter which would have been a defence to a claim in trespass².

1 Ie the offence under the Game Act 1831 s 30; see PARAS 786-787.

2 Game Act 1831 s 30 proviso. For specific defences see PARAS 789-790. Cf *Gleeson v Hurley* [1916] 2 IR 180.

UPDATE

783-790 Dog spears and traps ... Claim of right

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(3) CRIMINAL OFFENCES BY INFRINGING GAME RIGHTS/(i) Poaching and Trespass in Pursuit of Game/A. IN GENERAL/789. Leave and licence.

789. Leave and licence.

The leave and licence¹ of the occupier of the land is a valid defence to a charge of trespassing in the daytime in search or pursuit of game, woodcock, snipe or rabbits² when the occupier is the person having the right to the game³, but the act must be strictly within the terms of the leave or licence⁴.

When, however, the right to the game has been reserved, the holder of that right is the legal occupier for the purpose of granting leave or licence to enter in search or pursuit of game, woodcock, snipe or rabbits, and the actual occupier's leave or licence provides no defence⁵, since the tenant himself has no such right and can himself be convicted of trespassing in pursuit of game⁶. In the case of wastes or commons within a manor, lordship or royalty, or reputed manor, lordship or royalty, the lord or steward of the Crown of the manor, lordship or royalty is the legal occupier for this purpose⁷.

¹ Leave or licence given after the fact would not condone the offence: *Morden v Porter* (1860) 7 CBNS 641 at 647 per Williams J.

² See the offence under the Game Act 1831 s 30; see PARAS 786-787.

³ See the Game Act 1831 s 30. See *Pochin v Smith* (1887) 52 JP 4, DC.

⁴ Where, therefore, a man obtained leave or licence from the occupier's wife to hunt rabbits and proceeded to course a hare, he was not within the provision: *Taylor v Jackson* (1898) 78 LT 555. Quaere, whether in any case the leave or licence obtained from the spouse of the occupier is a valid defence: *Taylor v Jackson* (1898) 78 LT 555.

⁵ Game Act 1831 s 30; *Pryce v Davies* (1872) 36 JP 214; *Morden v Porter* (1860) 7 CBNS 641. If the person to whom leave is granted by the actual occupier kills, takes or is in pursuit of game (but not woodcock, snipe or rabbits), the actual occupier himself is liable to a penalty for the pursuit and for every head of game killed or taken: see the Game Act 1831 s 12; and PARA 765. When, as for instance on a parol lease of land, there is a dispute as to whether the right to game is reserved, it seems that the question is one of fact for the magistrates to decide: *R v Critchlow* (1878) 26 WR 681, DC. Where under an agreement not validly executed a person has taken the right to shoot, he cannot give valid leave to another to do so, as he has no legal right himself: *Brigstocke v Rayner* (1875) 40 JP 245.

⁶ *Liversedge v Whiteoak* (1893) 57 JP 692, DC. He cannot, however, be convicted for trespassing in pursuit of rabbits, since 'game' is to be understood in the strict sense of the definition of the Game Act 1831 s 2 (see PARA 717): *Spicer v Barnard* (1859) 1 E & E 874 at 878-880. Neither the tenant nor anyone acting under his direction is, in such case, liable to be prosecuted under the Game Act 1831 s 30 for trespass (*Spicer v Barnard* (1859) 1 E & E 874), so that the animals and birds mentioned in that section which are not 'game' can be killed by the tenant without risk of prosecution: *Spicer v Barnard* (1859) 1 E & E 874; *Padwick v King* (1859) 7 CBNS 88. For the tenant's statutory right to kill and take ground game see PARA 772.

⁷ Game Act 1831 s 30.

UPDATE

783-790 Dog spears and traps ... Claim of right

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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790. Claim of right.

A person charged with trespassing in the daytime in search or pursuit of game or woodcock, snipe or rabbits¹ may also set up such a claim of right as will oust the justices' jurisdiction². To have this effect the claim must be to a right relating to the land³ made bona fide⁴ and upon reasonable grounds⁵. If the claim is a bona fide claim, it is not for the justices to inquire into all the circumstances to see if it is impossible. When it is not on the face of it impossible, the justices' jurisdiction is at an end⁶, but their jurisdiction is not ousted by a bona fide claim of a right which cannot exist in law, nor by a bona fide but mistaken belief on the part of the defendant that he has a right to kill the game⁷.

¹ ie the offence under the Game Act 1831 s 30; see PARAS 786-787.

² *R v Cridland* (1857) 7 E & B 853; cf *Cole v Miles* (1888) 57 LJMC 132; and *Morrison v Anderson* 1913 JC 114.

³ In order to succeed, the defendant must set up a title to the land in himself or in some other through whose licence or authority he was acting: *Leatt v Vine* (1861) 30 LJMC 207; *Cornwell v Sanders* (1862) 3 B & S 206. Where a boundary hedge was being beaten and the defendant was standing on land to which he had no title, he could not set up a claim of right: *Philpot v Bugler* (1890) 54 JP 646, DC. When in the course of the hearing of a summons for assault defendant gamekeepers claimed the right to take from the prosecutor a bag, the prosecutor's property, on the ground that it contained rabbits belonging to the landlord, this was not such a claim of right as would oust the justices' jurisdiction, as it did not relate to an interest in land: *White v Fox* (1880) 49 LJMC 60, DC. See also *Legg v Pardoe* (1860) 9 CBNS 289. Cf the dicta in *Andrews v Carlton* (1928) 93 JP 65, DC.

⁴ *White v Feast* (1872) LR 7 QB 353; *Lovesy v Stallard* (1874) 30 LT 792; *Penwarden v Palmer* (1894) 10 TLR 362, DC; *Adams v Masters* (1871) 24 LT 502.

⁵ The absence of mens rea is not of itself a complete defence: *Kiddle v Kayley* (1864) 10 LT 339; *Watkins v Major* (1875) LR 10 CP 662; *Birnie v Marshall* (1876) 41 JP 22, DC; and see *Morden v Porter* (1860) 7 CBNS 641; *Newcombe v Fewins* (1876) 41 JP 581, DC; *Mann v Nurse* (1901) 17 TLR 569, DC; *Dickinson v Ead* (1914) 30 TLR 496, DC.

⁶ *Pochin v Smith* (1887) 52 JP 4, DC; *Scott v Baring* (1895) 64 LJMC 200; cf *Watkins v Smith* (1878) 38 LT 525, DC.

⁷ *Mussett v Burch* (1876) 35 LT 486, DC; *Hudson v MacRae* (1863) 4 B & S 585; *Leatt v Vine* (1861) 30 LJMC 207.

UPDATE

783-790 Dog spears and traps ... Claim of right

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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B. NIGHT POACHING

791. Offence of poaching by night.

It is an offence, punishable on summary conviction by a fine not exceeding level 3 on the standard scale¹, to take² or destroy any game³ or rabbits unlawfully by night⁴ upon any land, whether open or inclosed⁵, or upon any public road, highway or path, or the sides thereof, or at the openings, outlets or gates from any such land into a public road, highway or path⁶, or unlawfully to enter or be upon any land, whether open or inclosed, by night with a gun, net, engine or other instrument for the purpose of taking or destroying game⁷.

1 As to the standard scale see PARA 738 note 1.

2 'To take' means to catch, not, as in the case of theft, to take away: *R v Glover* (1814) Russ & Ry 269, CCR; *Bevan v Hopkinson* (1876) 34 LT 142, DC.

3 As to the meaning of 'game' see the Night Poaching Act 1828 s 13; and PARA 717 text and note 3. It means live game the property in which is not absolute. It is not an offence under this provision to enter for the purpose of taking young pheasants from a coop: *R v Garnham* (1861) 2 F & F 347.

4 'Night' is considered to commence at the expiration of the first hour of sunset and to conclude at the beginning of the last hour before sunrise: Night Poaching Act 1828 s 12 (amended by the Statute Law Revision (No 2) Act 1888). 'Sunset' means the actual hour at which the sun sets in the particular place: *Curtis v March* (1858) 3 H & N 866; cf *Gordon v Cann* (1899) 68 LQB 434, DC. See further, as to the meanings of 'night' and 'sunset', **TIME** vol 97 (2010) PARA 313.

5 Night Poaching Act 1828 s 1 (amended by the Statute Law Revision (No 2) Act 1888; the Criminal Law Act 1977 ss 15, 30, Sch 1; and by virtue of the Criminal Justice Act 1982 s 46). This offence and the offence of unlawfully entering or being on land (see the text to note 7) are two separate offences and cannot be charged in the alternative in one count: see *R v Disney* [1933] 2 KB 138, CCA.

6 Night Poaching Act 1844 s 1 (amended by the Statute Law Revision Act 1891).

7 Night Poaching Act 1828 s 1 (as amended: see note 5). Note that rabbits are not included in this part of s 1. Waste land at the side of a highway is not 'open land' in the sense intended: *Veysey v Hoskins, Harris v Hoskins* (1865) 34 LJMC 145. In order to prove that a person is unlawfully on land at night it is not necessary to prove that he did not have leave or licence to be there: *R v Wood* (1856) Dears & B 1, CCR. As to the search of a person and the forfeiture of game, guns, traps, etc see PARA 795.

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792. Arrest of night poacher.

Where any person is found on any land committing an offence of night poaching¹, the owner or occupier of the land, or the lord of the manor or reputed manor in which the land is situate, and any gamekeeper or servant of any such person or any person assisting such gamekeeper or servant may seize and apprehend the offender on the land or, in case of pursuit being made, in any place to which he may have escaped from the land, and must deliver him as soon as may be into the custody of a police officer so that he may be taken before the justices². A person committing an offence of night poaching on a public road, highway or path³ may similarly be apprehended by the owner or occupier of any land adjoining either side of that part of the road, highway or path where the offender may be, or by his gamekeeper or servant or any person assisting such gamekeeper or servant⁴.

A police constable who has reasonable grounds for suspecting that a person is committing an offence of night poaching on any land⁵ may enter on the land for the purpose of arresting him⁶.

1 Ie under the Night Poaching Act 1828 s 1: see PARA 791.

2 Night Poaching Act 1828 s 2 (amended by the Statute Law Revision (No 2) Act 1888; and the Wild Creatures and Forest Laws Act 1971 s 1(4), Schedule): see further PARA 812.

3 Ie under the Night Poaching Act 1844 s 1: see PARA 791.

4 Night Poaching Act 1844 s 1.

5 As to the meaning of 'land', and for exceptions, see PARA 785 note 9.

6 Game Laws (Amendment) Act 1960 s 2(1) (amended by the Police and Criminal Evidence Act 1984 s 119(1), Sch 6 para 10; and the Serious Organised Crime and Police Act 2005 s 111, Sch 7 para 52(2)).

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793. Assault by night poacher.

A person found poaching by night¹ who assaults or offers any violence with an offensive weapon² towards any person authorised to arrest him³ is liable on summary conviction to imprisonment for up to six months or a fine not exceeding level 4 on the standard scale, or both⁴. When an assault is committed by one of a party of poachers, a member of the party who did not take any part in the assault cannot be convicted of the assault unless there was a common purpose not merely to poach but also to use violence⁵.

If three or more persons by night⁶ unlawfully enter or are upon any land, whether open or inclosed, for the purpose of taking or destroying game or rabbits, and any of them is armed⁷ with a gun, cross-bow, firearms, bludgeon or any other offensive weapon⁸, each of them is liable on summary conviction to imprisonment for up to six months or a fine not exceeding level 4 on the standard scale, or both⁹. It is not essential that all the persons should actually enter the land; if all are associated for a common purpose and some enter while others remain near enough to assist, all of them may be convicted¹⁰. It is not necessary that all of them should be on land in the same ownership¹¹, but they must have a plan in common¹². They may be convicted even though they have abandoned their arms before being arrested¹³.

1 le an offender under the Night Poaching Act 1828 s 1, or the Night Poaching Act 1844 s 1: see PARA 791.

2 le a gun, cross-bow, firearms, bludgeon, stick club or any other offensive weapon: Night Poaching Act 1828 s 2.

3 As to arrest see PARA 792.

4 Night Poaching Act 1828 s 2 (amended by the Wild Creatures and Forest Laws Act 1971 s 1(4), Schedule; the Criminal Law Act 1977 ss 15(4)(a), 30(3), 65, Sch 12; and by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 738 note 1.

A person charged first with a count for assault under this provision, and secondly with a count for common assault, could not be convicted of a common assault on the first count after the second count had been abandoned: see *R v Day and Cox* (1870) 22 LT 452, CCR; and cf *R v Wilson* [1955] 1 All ER 744, [1955] 1 WLR 493, CCA, cited in PARA 785 note 4. If the trespasser assaults a person at a time or in a place (eg a highway) when or where that person is not attempting to arrest him, he is not guilty of an assault under this provision: *R v Doddridge* (1860) 8 Cox CC 335.

5 *R v Pearce* (1929) 21 Cr App Rep 79, CCA. As to seizure of game see PARA 795.

6 As to the meaning of 'night' see PARA 791 note 4.

7 If one of the party is armed all are deemed to be so: *R v Goodfellow* (1845) 1 Car & Kir 724, CCR; *Smith's Case* (1818) Russ & Ry 368, CCR; and see *R v Andrews* (1837) 2 Mood & R 37; *R v Southern* (1821) Russ & Ry 444, CCR.

8 Large stones have been held to be offensive weapons: *R v Grice* (1837) 7 C & P 803. Note that 'stick' and 'club' are not specifically named in the Night Poaching Act 1828 s 9, in contrast to the offence created by s 2 (see text and note 4). A stick is not necessarily an offensive weapon; whether it is so depends on the object with which it is taken out: *R v Fry and Webb* (1837) 2 Mood & R 42; cf *R v Palmer* (1831) 1 Mood & R 70; *R v Williams* (1878) 14 Cox CC 59. This may perhaps be the case even if it is in fact used offensively: *R v Merry* (1847) 2 Cox CC 240; but see *R v Sutton* (1877) 13 Cox CC 648. As to the meaning of 'offensive weapon' under the Prevention of Crime Act 1953 s 1(4), see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 699.

9 Night Poaching Act 1828 s 9 (amended by the Statute Law Revision (No 2) Act 1888; the Criminal Justice Administration Act 1962 s 20(2), Sch 5 Pt II; and the Criminal Law Act 1977 ss 30(3), 65, Sch 12; and by virtue of the Criminal Justice Act 1982 s 46).

10 *R v Whittaker* (1848) 2 Car & Kir 636, CCR; *R v Passey* (1836) 7 C & P 282; *R v Scotton* (1844) 5 QB 493; *R v Andrews* (1837) 2 Mood & R 37. Sending in a dog to drive hares into a net set in the fence is not an entering of the land within this provision: *R v Nickless* (1839) 8 C & P 757.

11 *R v Uezzell, Eaton and Parkins* (1851) 2 Den 274, CCR.

12 *R v Nickless* (1839) 8 C & P 757. If one is in a wood separated by a high road from the land where the others are, there may not be sufficient evidence of a common plan: *R v Dowsell* (1834) 6 C & P 398.

13 *R v Nash and Weller* (1819) Russ & Ry 386.

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C. PREVENTION OF POACHING; POWERS OF ARREST, SEARCH, SEIZURE AND FORFEITURE

794. Powers of arrest.

Powers of arrest are given to owners and occupiers of land and their gamekeepers and servants, and to police constables, to arrest persons found poaching on land whether by day¹ or night².

1 See PARA 785.

2 See PARA 792.

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795. Powers of search and seizure.

A police constable may, in any highway, street or public place¹, search any person whom he has good cause to suspect of coming from land where he has been unlawfully in search or pursuit of game², or any person aiding or abetting³ him, and of having in his possession any game unlawfully obtained, or any gun, part of a gun, cartridges or other ammunition, or any nets, traps, snares or other devices of a kind used for the taking of game⁴. This right of search extends to stopping and searching any cart or other conveyance in or on which the constable suspects any such game or article is being carried⁵. He may seize and detain any such game or article found, whereupon he must issue a summons against the person concerned who, upon conviction, is liable to a fine not exceeding level 3 on the standard scale⁶. Actual search is not necessary where the presence of the incriminating thing is evident⁷. There is no right of arrest under this provision⁸.

When any person is found poaching on any land, whether by day or night, any person having the right to kill game on the land, or the occupier, or the gamekeeper or servant of either of them, or any person acting by order in aid of any of those persons, may demand and, if refused, may seize any recently killed game⁹ in that person's possession for the benefit of the person entitled to the game on the land¹⁰.

Further, when a person is apprehended by a police constable¹¹ for poaching offences¹², a police constable by or in whose presence he was apprehended may search him and may seize and detain any game¹³ or rabbits, or any gun, part of a gun or other article¹⁴ of a kind used for killing or taking of game or rabbits, which are found in his possession¹⁵.

The disposal of seized articles is a matter for the court¹⁶.

A vehicle used by a person in connection with an offence of poaching in company¹⁷ of which he has been convicted, may be liable to forfeiture¹⁸.

1 A public place would seem for this purpose to be any place in which the police would be in the ordinary execution of their duty: *Clarke v Crowder* (1869) LR 4 CP 638. See also *Re Freestone* (1856) 1 H & N 93; and as to the meaning of 'public place' in other statutes see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 380; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 699.

2 As to the meaning of 'game' in this context see the Poaching Prevention Act 1862 s 1; and PARA 717 text and note 4.

3 See *Jones v Dicker* (1870) 22 LT 95; *Shuttleworth v Grange* (1867) 31 JP 280; *Stowe v Marjoram* (1909) 101 LT 569, 73 JP 498.

4 Poaching Prevention Act 1862 s 2; Game Laws (Amendment) Act 1960 s 3(2).

5 Poaching Prevention Act 1862 s 2.

6 Poaching Prevention Act 1862 s 2 (amended by the Game Laws (Amendment) Act 1960 ss 3(3), 5(3); by virtue of the Criminal Justice Act 1982 ss 38, 46; and by the Courts Act 2003 s 109(1), (3), Sch 8 para 45, Sch 10). As to the standard scale see PARA 738 note 1.

There are two offences with which a suspect may be charged: (1) having obtained game by having been unlawfully on land (see *Evans v Botterill* (1863) 3 B & S 787; *Brown v Turner* (1863) 13 CBNS 485; and *Fuller v Newland* (1863) 27 JP 406) in pursuit of game; and (2) having used a gun or net, etc for unlawfully taking game (whether or not it was used successfully: see *Jenkin v King* (1872) LR 7 QB 478; *Gray v Hawthorn* 1961 JC 13).

Unless a person is charged with one or other of these offences or with being an accessory no offence is disclosed: *Lundy v Botham* (1877) 41 JP 774, DC; *Garman v Plaice* [1969] 1 All ER 62, [1969] 1 WLR 19, DC). The summons must be for an offence against the Poaching Prevention Act 1862 s 2, and no other: *Stowe v Benstead* [1909] 2 KB 415, DC.

7 *Hall v Knox* (1863) 4 B & S 515; *Ex p Hurst* (1863) 27 JP 824; *Lloyd v Lloyd* (1885) 14 QBD 725, DC. See also *Brown v Turner* (1863) 13 CBNS 485; *Jones v Dicker* (1870) 22 LT 95.

8 *R v Spencer* (1863) 3 F & F 854, 857.

9 As to the meaning of 'game' in this context see PARA 717 text to note 2.

10 Game Act 1831 s 36 (amended by the Statute Law Revision (No 2) Act 1888; and the Wild Creatures and Forest Laws Act 1971 s 1(4), Schedule). See also PARA 800.

11 In accordance with the Police and Criminal Evidence Act 1984 s 24: Game Laws (Amendment) Act 1960 s 4(1) (amended by the Police and Criminal Evidence Act 1984 s 119(1), Sch 6 para 11; and the Serious Organised Crime and Police Act 2005 s 111, Sch 7 para 52(3)). See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 924.

12 Ie under the Night Poaching Act 1828 ss 1, 9 and the Game Act 1831 s 30; see PARAS 786-787, 791, 793.

13 As to the meaning of 'game' in this context see PARA 717 text to note 6.

14 Ie articles as enumerated in the text to note 4.

15 Game Laws (Amendment) Act 1960 s 4(1) (as amended: see note 11). This is without prejudice to any other power a police constable has to search an arrested person and to detain things found in his possession, and to the powers of gamekeepers and others to seize game from trespassers under the Game Act 1831 s 36 (see text and note 10): Game Laws (Amendment) Act 1960 s 4(3). No search under that Act may be an intimate search, nor a search of a person in police detention at a police station: see the Police and Criminal Evidence Act 1984 s 53(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 781.

16 See PARA 800.

17 See PARA 787.

18 See PARA 796.

UPDATE

795-797 Powers of search and seizure ... Regulation of proceedings

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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796. Forfeiture of vehicle on conviction of poaching in company.

Where a person is convicted of an offence of poaching by day in company¹ and the court is satisfied that any vehicle belonging to him or in his possession or under his control at the relevant time² has been used for the purpose of committing or facilitating the commission of the offence³, it may make an order for forfeiture in respect of that vehicle⁴. The court may make such an order whether or not it also deals with the offender in respect of the offence in any other way and without regard to any restriction on forfeiture in any enactment⁵. An order for forfeiture operates to deprive the offender of his rights, if any, in the vehicle to which it relates, and the vehicle must be taken into the possession of the police if it is not already in their possession⁶.

Where any vehicle has been forfeited under such an order, a magistrates' court may, on application by a claimant of the vehicle, other than the offender from whom it was forfeited, make an order for delivery of the vehicle to the applicant if it appears to the court that he is its owner⁷. No such application may be made after the expiration of six months from the date on which a forfeiture order in respect of the vehicle was made and may not succeed unless the claimant satisfies the court either that he had not consented to the offender having possession of the vehicle or that he did not know, and had no reason to suspect, that it was likely to be used for the purpose of committing or facilitating the commission of the offence⁸.

The Secretary of State⁹ may make regulations for the disposal of vehicles, and for the application of the proceeds of sale of forfeited vehicles where no application by a claimant of the property has been made within the specified period¹⁰ or no such application has succeeded¹¹.

1 Ie under the Game Act 1831 s 30 as one of five or more persons liable for such an offence; see PARA 787.

2 Ie the time when the vehicle was used for the purpose of committing or facilitating the commission of the offence, or the time of the issue of a summons in respect of the offence: Game Laws (Amendment) Act 1960 s 4A(12) (s 4A added by the Criminal Justice and Public Order Act 1994 s 168(1), Sch 9 para 4).

3 For these purposes, facilitating the commission of the offence is to be taken to include the taking of any steps after it has been committed for the purpose of avoiding apprehension or detection; or removing from the land any person or property connected with the offence: Game Laws (Amendment) Act 1960 s 4A(3) (as added: see note 2).

4 Game Laws (Amendment) Act 1960 s 4A(1) (as added: see note 2).

5 Game Laws (Amendment) Act 1960 s 4A(2) (as added: see note 2).

6 Game Laws (Amendment) Act 1960 s 4A(4) (as added: see note 2).

7 Game Laws (Amendment) Act 1960 s 4A(5) (as added: see note 2). An order under s 4A(5) does not affect the right of any person to take, within the period of six months from the date of an order under s 4A(5), proceedings for the recovery of the vehicle from the person in possession of it in pursuance of the order, but on the expiration of that period the right ceases: s 4A(8) (as so added).

8 Game Laws (Amendment) Act 1960 s 4A(6), (7) (as added: see note 2).

9 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

10 Ie specified under the Game Laws (Amendment) Act 1960 s 4A(6); see text and note 8.

11 Game Laws (Amendment) Act 1960 s 4A(9) (as added: see note 2). The regulations may also provide for the investment of money and the audit of accounts: s 4A(10) (as so added). They must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 4A(11) (as so added). At the date at which this volume states the law, no regulations had been made under this provision.

UPDATE

795-797 Powers of search and seizure ... Regulation of proceedings

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

796 Forfeiture of vehicle on conviction of poaching in company

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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D. PROCEEDINGS; PENALTIES

797. Regulation of proceedings.

The proceedings both before and at the hearing before the justices are regulated by the Magistrates' Courts Act 1980¹.

Proceedings under the Game Act 1831 must be commenced within three calendar months after the commission of the offence².

¹ *Ryland v Wynn* (1900) 64 JP 522. See also the Criminal Procedure Rules 2005, SI 2005/384; and **MAGISTRATES**.

² Game Act 1831 s 41 (amended by the Statute Law Revision (No 2) Act 1888; and the Statute Law Revision Act 1891). The three months must be calculated so as to exclude the day of the offence, but to include that on which the information is laid: *Radcliffe v Bartholomew* [1892] 1 QB 161. The exact date need not be specified so long as it is stated to be within the required three months' limit: cf *Onley v Gee* (1861) 7 Jur NS 570.

UPDATE

795-797 Powers of search and seizure ... Regulation of proceedings

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

797 Regulation of proceedings

NOTE 1--SI 2005/384 replaced: Criminal Procedure Rules 2010, SI 2010/60.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(3) CRIMINAL OFFENCES BY INFRINGING GAME RIGHTS/(i) Poaching and Trespass in Pursuit of Game/D. PROCEEDINGS; PENALTIES/798. Persons to lay information.

798. Persons to lay information.

Information may be laid by anyone, whether he is interested in the land trespassed on or not¹. Though usually made in writing it need not be so², but unless it is in writing and substantiated on oath a justice may not issue a warrant for arrest³; nor should a warrant be issued where a summons will effect the purpose⁴, but if a summons is ineffectual in obtaining the defendant's presence at the hearing a warrant may be issued⁵.

One information is sufficient where more than one offender is a party to the same offence⁶ and the justices have a discretion as to whether the offenders are tried together or not; but in any case there should be a separate conviction of each of them⁷. The information must charge one offence only⁸, and the conviction, if any, must be for that offence⁹.

1 *Midelton v Gale* (1838) 8 Ad & El 155; *Morden v Porter* (1860) 7 CBNS 641.

2 *R v Hughes* (1879) 4 QBD 614, CCR; and see **MAGISTRATES**.

3 See the Magistrates' Courts Act 1980 s 1(3); and **MAGISTRATES**.

4 *O'Brien v Brabner* (1885) 49 JP Jo 227, DC.

5 See the Magistrates' Courts Act 1980 s 13; and **MAGISTRATES**.

6 *R v Cridland* (1857) 7 E & B 853; *R v Littlechild* (1871) LR 6 QB 293; *R v Staffordshire Justices* (1858) 32 LTOS 105. This is the case whether all are principals or some principals and some aiders or abettors.

7 *R v Littlechild* (1871) LR 6 QB 293.

8 Criminal Procedure Rules 2005, SI 2005/384, r 7.3(1) (amended by SI 2006/2636); and see *R v Cridland* (1857) 7 E & B 853. However, if it appears that an information charges more than one offence, the court has power to call upon the prosecutor to elect on which offence he desires the court to proceed: Criminal Procedure Rules 2005, SI 2005/384, r 7.3(3) (amended by SI 2006/2636).

9 Cf *Martin v Pridgeon* (1859) 1 E & E 778; *R v Brickill* (1864) 4 New Rep 166; and see **MAGISTRATES**.

UPDATE

798 Persons to lay information

NOTE 8--SI 2005/384 r 7.3 replaced: Criminal Procedure Rules 2010, SI 2010/60, r 7.3.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(3) CRIMINAL OFFENCES BY INFRINGING GAME RIGHTS/(i) Poaching and Trespass in Pursuit of Game/D. PROCEEDINGS; PENALTIES/799. Irregularity in information or summons.

799. Irregularity in information or summons.

An irregularity in the information or summons is cured by the defendant's appearance to answer the charge¹. Where more than one defendant is charged with the same offence under one of the Acts in respect of which a penalty is imposed on every person offending against the statute, each of them is liable to the full penalty if convicted². A defendant who is convicted may appeal to the Crown Court³, or he may require the justices to state a case for the opinion of the High Court upon a point of law⁴.

1 *R v Hughes* (1879) 4 QBD 614. When the defendant has once appeared it may be possible to prefer another charge against him: *R v Hughes* (1879) 4 QBD 614.

2 *R v Littlechild* (1871) LR 6 QB 293.

3 See the Magistrates' Courts Act 1980 s 108(1); and **MAGISTRATES** vol 29(2) (Reissue) PARA 833.

4 See the Magistrates' Courts Act 1980 s 111. As to appeals to the High Court, including appeals by way of case stated, see CPR Pt 52; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1657 et seq.

UPDATE

799 Irregularity in information or summons

NOTE 4--1980 Act s 111 amended: SI 2009/871.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(3) CRIMINAL OFFENCES BY INFRINGING GAME RIGHTS/(i) Poaching and Trespass in Pursuit of Game/D. PROCEEDINGS; PENALTIES/800. Forfeiture and disposal of seized game, guns and other articles.

800. Forfeiture and disposal of seized game, guns and other articles.

Where a person is convicted of an offence relating to obtaining game by unlawfully going on land, or using a gun or other article for unlawfully killing or taking game¹, the court convicting him may, if it thinks fit, direct that any game, gun or other article duly seized from that person² which was in his possession or which was being carried by him in any cart or other conveyance be forfeited, whether or not the offence of which he was convicted concerned that game, gun or article³.

Further, where a person apprehended by a police constable⁴ for a poaching offence⁵ is convicted of such an offence, the court may if it thinks fit direct that any game⁶ or rabbit, or any gun or other article, duly seized⁷ on his apprehension and which was in his possession, be forfeited, whether or not the offence of which he was convicted concerned that game, rabbit, gun or other article⁸.

Anything forfeited must be sold or otherwise disposed of in such manner as the court may direct, the proceeds of sale being applied as if they were a fine⁹.

If the person charged is not convicted the game or other thing seized, or its value, must be restored to him¹⁰.

A person who sells seized game under a justice's written direction is not liable to any penalty for the sale¹¹.

1 Ie an offence under the Poaching Prevention Act 1862 s 2: see PARA 795. As to the meaning of 'game' see PARA 717 text and note 4, definition applied by the Game Laws (Amendment) Act 1960 s 3(5).

2 See PARA 795.

3 Game Laws (Amendment) Act 1960 s 3(3) (amended by the Statute Law (Repeals) Act 2004).

4 In accordance with the Police and Criminal Evidence Act 1984 s 24: Game Laws (Amendment) Act 1960 s 4(1) (amended by the Police and Criminal Evidence Act 1984 s 119(1), Sch 6 para 11; and the Serious Organised Crime and Police Act 2005 s 111, Sch 7 para 52(1), (3)); see PARA 795. See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 924.

5 Ie under the Night Poaching Act 1828 ss 1, 9 and the Game Act 1831 s 30; see PARAS 786-787, 791, 793.

6 As to the meaning of 'game' in this context see PARA 717 text and note 6.

7 Ie under the Game Laws (Amendment) Act 1960 s 4(1): see PARA 795.

8 Game Laws (Amendment) Act 1960 s 4(2).

9 Magistrates' Courts Act 1980 s 140; and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 149.

10 Game Laws (Amendment) Act 1960 ss 3(4), 4(4). Where a conviction is quashed, the value of the goods to be restored is their value at the time the conviction is quashed: *Stowe v Benstead* [1909] 2 KB 415, DC. Where a seizure of eggs which might properly have been made under the Poaching Prevention Act 1862 is wrongly made with a view to prosecution under the Game Act 1831, a claim of conversion is maintainable against the person who seized the eggs: see *Stowe v Benstead* [1909] 2 KB 415, DC.

11 Game Laws (Amendment) Act 1960 ss 3(4), 4(4).

UPDATE

**800-801 Forfeiture and disposal of seized game, guns and other articles,
Theft of game and eggs**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(3) CRIMINAL OFFENCES BY INFRINGING GAME RIGHTS/(ii) Other Criminal Offences/801. Theft of game and eggs.

(ii) Other Criminal Offences

801. Theft of game and eggs.

Animals which constitute game in its various statutory definitions¹ can be the subject of theft once they are reduced into possession, in the same way as wild creatures generally². The same rules apply to young birds unable to fly³ and to the eggs of game birds⁴. A poacher who kills game and takes it away is generally not guilty of theft⁵.

1 For such definitions see PARA 717.

2 See the Theft Act 1968 s 4(4). Generally as to theft see PARAS 736-737.

3 It is submitted that the statutory provisions have not altered the situation under the common law in this regard; see *R v Shickle* (1868) LR 1 CCR 158.

4 See note 3; and *R v Stride and Millard* [1908] 1 KB 617, CCR. As to the protection of wild birds and their eggs see PARA 994 et seq.

5 See the Theft Act 1968 s 4(4). However, a bred pheasant which has yet to be released remains 'game' although not in a wild state, so a poacher who takes such a bird from a game pen could be guilty of theft.

UPDATE

800-801 Forfeiture and disposal of seized game, guns and other articles, Theft of game and eggs

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(3) CRIMINAL OFFENCES BY INFRINGING GAME RIGHTS/(ii) Other Criminal Offences/802. Use of spring guns and man traps.

802. Use of spring guns and man traps.

An owner of rights over game is not entitled to set or place, or cause to be set or placed, any spring gun, man trap or other engine¹ calculated to destroy human life or inflict grievous bodily harm, with intent that it shall, or whereby it may, destroy or inflict grievous bodily harm upon a trespasser or other person who may come in contact with it²; and if he knowingly and wilfully permits any such engine which may have been set or placed in any place in his possession or occupation by some other person to continue to be so set or placed, he is deemed to have set or placed it with the above-mentioned intent³.

1 This does not include a pair of electrified wires: see *R v Munks* [1964] 1 QB 304, [1963] 3 All ER 757, CCA.

2 Offences against the Person Act 1861 s 31 (amended by the Statute Law Revision Act 1892). To do so is an offence punishable with imprisonment for not more than five years: Offences against the Person Act 1861 s 31; Penal Servitude Act 1891 s 1; Criminal Justice Act 1948 s 1(1), (2). See further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 131.

3 Offences against the Person Act 1861 s 31 (as amended: see note 2). Damages may be awarded on a claim by anyone injured by such devices: *Bird v Holbrook* (1828) 4 Bing 628. It is otherwise where the plaintiff was a trespasser and knew of their existence: *Ilott v Wilkes* (1820) 3 B & Ald 304.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(4) CLOSE DAYS AND SEASONS FOR GAME/803. Sundays and Christmas Day.

(4) CLOSE DAYS AND SEASONS FOR GAME

803. Sundays and Christmas Day.

It is an offence to kill or take any game¹ on a Sunday or Christmas Day, or to use for that purpose any dog, gun, net or other engine or instrument². It is not an essential ingredient of the offence that the instrument should be set on a Sunday or Christmas Day; a person setting an instrument for the purpose of killing or taking game is using it for that purpose so long as it remains set³. The offender is liable on conviction before two justices of the peace to a penalty not exceeding level 1 on the standard scale⁴ for every such offence⁵.

¹ le game under the Game Act 1831: see PARA 717.

² Game Act 1831 s 3. The term engine (derived from *ingenium*) includes a snare, which is a device or contrivance (an engine) for killing game: *Allen v Thompson* (1870) LR 5 QB 336. The offence may be committed by two or more persons who may be out together, and though only one gun was employed they may be separately convicted of the offence: *R v Littlechild* (1871) LR 6 QB 293.

³ *Allen v Thompson* (1870) LR 5 QB 336.

⁴ As to the standard scale see PARA 738 note 1.

⁵ Game Act 1831 s 3 (amended by the Statute Law Revision (No 2) Act 1888; the Criminal Law Act 1977 s 31(6); by virtue of the Criminal Justice Act 1982 ss 38, 46; and by the Statute Law (Repeals) Act 1989).

UPDATE

803-811 Sundays and Christmas Day ... Powers as to daytime poaching

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(4) CLOSE DAYS AND SEASONS FOR GAME/804. Close season.

804. Close season.

The close season, namely, that part of the year during which the killing or taking¹ of game is forbidden, varies in different cases.

Thus, red grouse and ptarmigan may not be killed or taken between 10 December and 12 August; black game between 10 December and 20 August or, in Somerset, Devon and the New Forest, 1 September; partridges between 1 February and 1 September; and pheasants between 1 February and 1 October². The penalty for killing or taking any of these kinds of game in the prohibited period is a fine not exceeding level 1 on the standard scale³ for every head of game killed or taken⁴. These restrictions do not, however, operate in cases where the Secretary of State⁵ has imposed a requirement that game be killed or destroyed for the purpose of preventing damage to crops, pasture, foodstuffs, livestock, trees, hedges, banks or any works on land⁶.

1 'Taking' means catching, as eg in a snare, with a view to keeping or killing: *R v Glover* (1814) Russ & Ry 269, CCR; *Watkins v Price* (1877) 47 LJMC 1, DC. As to the computation of periods of time within which certain acts may or may not be done see **TIME** vol 97 (2010) PARA 329 et seq.

2 Game Act 1831 s 3. The days mentioned in each case are not within the prohibited period, and it is therefore not unlawful to kill or take game on either the first or the last day of the period. The section also provides that bustard may not be killed or taken between 1 March and 1 September, but they are now covered by the Wildlife and Countryside Act 1981 s 1(1): see PARA 994. The Wildlife and Countryside Act 1981 also provides for a close season for capercaillie, woodcock and snipe: see s 2(4); and PARA 995.

3 As to the standard scale see PARA 738 note 1.

4 Game Act 1831 s 3 (amended by the Statute Law Revision (No 2) Act 1888; the Criminal Law Act 1977 s 31(6); by virtue of the Criminal Justice Act 1982 ss 38, 46; and by the Statute Law (Repeals) Act 1989).

5 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

6 See the Agriculture Act 1947 s 98(1), (2); and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1021. Such damage must be serious.

UPDATE

803-811 Sundays and Christmas Day ... Powers as to daytime poaching

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(4) CLOSE DAYS AND SEASONS FOR GAME/805. Restrictions on purchase and sale.

805. Restrictions on purchase and sale.

The protection afforded by the foregoing restrictions on killing or taking¹ is supplemented by further restrictions upon the purchase or sale of game birds unlawfully taken or killed.

If any person (1) sells or offers or exposes for sale; or (2) has in his possession or transports for the purposes of sale, any bird of game which has been unlawfully taken or killed², and which the person concerned knows or has reason to believe has been so taken or killed, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both³.

1 See PARAS 803-804 ante.

2 I.e. taken or killed in circumstances which constitute an offence under any of the Night Poaching Act 1828, the Game Act 1831, the Poaching Prevention Act 1862 or the Wildlife and Countryside Act 1981 Pt I (ss 1-27) (see PARA 994 et seq).

3 Game Act 1831 s 3A (added by SI 2007/2007). As to the standard scale see PARA 738 note 1.

UPDATE

803-811 Sundays and Christmas Day ... Powers as to daytime poaching

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(4) CLOSE DAYS AND SEASONS FOR GAME/806. Close season for hares and rabbits.

806. Close season for hares and rabbits.

There is no general close season for killing or taking hares, but during the months of March, April, May, June and July the sale or exposure for sale of hares (other than foreign hares imported into this country) and of leverets is prohibited and is punishable on summary conviction with a penalty of level 1 on the standard scale including the costs of the conviction¹; and the right of killing and taking hares and rabbits conferred by the Ground Game Acts² does not, in the case of the occupier of moorlands and uninclosed non-arable lands (other than detached portions of such lands, less than 25 acres in extent, adjoining arable lands), and of persons authorised by him, extend to (1) killing or taking them between 1 April and 31 August (both inclusive)³; or (2) killing them by the use of firearms between 1 September and 10 December (both inclusive)⁴. Save as aforesaid there is no close season for rabbits.

1 Hares Preservation Act 1892 ss 2-4 (s 2 amended by virtue of the Criminal Law Act 1977 s 31(6); and the Criminal Justice Act 1982 s 46). The sale of game birds during close season is also prohibited: see PARA 805. As to close seasons in respect of deer see PARA 976. As to the standard scale see PARA 738 note 1.

2 Ie the Ground Game Act 1880 and the Ground Game (Amendment) Act 1906; see PARA 772.

3 See the Ground Game Act 1880 ss 1 proviso (3), 8.

4 See the Ground Game (Amendment) Act 1906 s 2.

UPDATE

803-811 Sundays and Christmas Day ... Powers as to daytime poaching

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(5) GAMEKEEPERS/(i) Appointment/807. Appointment of gamekeepers.

(5) GAMEKEEPERS

(i) Appointment

807. Appointment of gamekeepers.

Gamekeepers are engaged in the same manner and on the same terms as to notice and the like by ordinary employers as any other employees¹. The requirement for a gamekeeper or his employer to hold a licence to kill game has been abolished except in Scotland².

1 If the gamekeeper occupies a cottage as such, he may be required to leave the cottage at the time he leaves his employer's service without further notice: *Bertie v Beaumont* (1812) 16 East 33; *White v Bayley* (1861) 10 CBNS 227; and see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 6 et seq, where the distinction between a lease and a mere licence to occupy premises is discussed. As to the general relations of employer and employee see **EMPLOYMENT** vol 39 (2009) PARA 2.

2 See the Game Licences Act 1860 ss 4, 5 Exemption 3 (repealed in relation to England and Wales by SI 2007/2007 and in relation to Northern Ireland by the Miscellaneous Transferred Excise Duties Act (Northern Ireland) s 80, Sch 4).

UPDATE

803-811 Sundays and Christmas Day ... Powers as to daytime poaching

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(5) GAMEKEEPERS/(i) Appointment/808. Gamekeepers in manors.

808. Gamekeepers in manors.

In a manor, lordship or royalty, or reputed manor, lordship or royalty¹, the lord or, in the case of a manor, lordship or royalty belonging to the Crown, the steward thereof, may by deed or, in the case of a body corporate, by writing under its seal, appoint² one or more persons to act as gamekeeper³ to preserve or kill the game⁴ within its limits for the use of the lord or steward⁵.

Moreover, the lord or steward may appoint and depute any person, whether or not acting as gamekeeper to any other person or retained and paid for as the male servant of any other person, to be a gamekeeper for the manor, lordship or royalty or for such division or district thereof as he may think fit, and may authorise him to kill game for the use of the gamekeeper or of any other person specified in the appointment or deputation and to exercise all the powers of a gamekeeper of a manor⁶. A gamekeeper so authorised to kill game for the use of any person other than the lord or steward must not be entered or paid for as the gamekeeper or male servant of the lord or steward⁷.

1 A wapentake or hundred, the lord of which cannot 'appoint', is not included: *Earl of Ailesbury v Pattison* (1778) 1 Doug KB 28. Reputed manors are manors the existence of which can be proved only by evidence of reputation: see **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 698. The general statutory enfranchisement of copyhold land did not affect the rights of the lord of manor in respect of taking game: see **REAL PROPERTY** vol 39(2) (Reissue) PARA 35.

2 The right of appointment is inseparable from the lordship of the manor, so that it cannot be granted to another: *Calcraft v Gibbs* (1792) 5 Term Rep 19. Where the manor is part of a trust estate, the trustee may appoint a gamekeeper for the purpose of preserving the game in the interest of the estate, but not in his own interest: *Webb v Earl of Shaftesbury*, *Earl of Shaftesbury v Arrowsmith* (1802) 7 Ves 480.

3 If the gamekeeper's right is challenged it is sufficient for him to prove that the lord has a colourable title to the manor (*Hunt v Andrews* (1820) 3 B & Ald 341), but in the absence or disproof of even a colourable title mere good faith on the part of the gamekeeper is insufficient to protect him (*Calcraft v Gibbs* (1792) 5 Term Rep 19).

4 As to the meaning of 'game' see PARA 717.

5 Game Act 1831 s 13 (amended by SI 2007/2007). Unless the contrary is proved it will be assumed that the game killed by the gamekeeper is for the use of the lord: *Spurrier v Vale* (1809) 10 East 413. As to deeds see the Law of Property (Miscellaneous Provisions) Act 1989 s 1; and **DEEDS AND OTHER INSTRUMENTS**.

6 Game Act 1831 s 14 (amended by the Statute Law Revision (No 2) Act 1888).

7 Game Act 1831 s 14.

UPDATE

803-811 Sundays and Christmas Day ... Powers as to daytime poaching

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(5) GAMEKEEPERS/(i) Appointment/809. Gamekeepers in Wales.

809. Gamekeepers in Wales.

In Wales an owner of land of the clear annual value of £500 which is not within the bounds of any manor, lordship or royalty, or which, if within such bounds, has been enfranchised or alienated therefrom, is entitled, by deed, to appoint a gamekeeper or gamekeepers to preserve or kill game on his lands¹. He may also, with the written permission of any other owner of similar lands in Wales, extend the authority of his gamekeeper to preserve or kill the game on those lands².

¹ See the Game Act 1831 s 15 (amended by the Statute Law Revision (No 2) Act 1888; and SI 2007/2007); Law of Property (Miscellaneous Provisions) Act 1989 s 1 (amended by SI 2005/1906).

² Game Act 1831 s 15 (as amended: see note 1). The £500 limit is not expressed by s 15 to apply to such lands.

UPDATE

803-811 Sundays and Christmas Day ... Powers as to daytime poaching

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(5) GAMEKEEPERS/(i) Appointment/810. Registration.

810. Registration.

Appointments and deputations of gamekeepers are not valid until registered with the clerk of the county council wherein the manors, lordships or royalties to which they relate are situated¹. After registration the appointment or deputation continues in force until the date named therein for its expiration or until revocation by dismissal or otherwise².

1 Game Act 1831 s 16 (amended by virtue of the Courts Act 1971 s 56(1), Sch 8 Pt I para 1(1) (b), (2), (4); and the Local Government Act 1922 s 1(10)); see *Rushworth v Craven* (1825) M'Cle & Yo 417; *Bush v Green* (1837) 4 Bing NC 41; *Lidster v Borrow* (1839) 9 Ad & El 654.

2 Game Act 1831 s 16 (as amended: see note 1). 'Otherwise' includes the death of the grantor, after which a new appointment or deputation must be made by his successor. Where, however, a gamekeeper, after the death of the person appointing him, continued to be employed by that person's successors, employment of a watcher by him has been considered sufficient authority to the watcher to arrest night poachers: *R v Fielding and Corbett* (1848) 2 Car & Kir 621.

UPDATE

803-811 Sundays and Christmas Day ... Powers as to daytime poaching

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(5) GAMEKEEPERS/(ii) Powers of Gamekeepers/811. Powers as to daytime poaching.

(ii) Powers of Gamekeepers

811. Powers as to daytime poaching.

If a gamekeeper, whether or not he is himself licensed, finds anyone trespassing in the daytime¹ upon land on which his employer has the right to the game in search or pursuit of game² or woodcock, snipe or rabbits, he may require the trespasser forthwith to quit the land and also to state his forename³, surname and place of abode⁴. Should the trespasser refuse to state his real name or place of abode, or give such a general description of the latter as to be illusory for the purpose of discovery, or wilfully continue or return upon the land, the gamekeeper, or anyone acting by his order and in his aid, may apprehend him and convey him or cause him to be conveyed as soon as conveniently may be before a justice of the peace⁵.

If the gamekeeper finds five or more persons so trespassing together, one or more of them being armed with a gun, and any of them by violence, intimidation or menace prevent or endeavour to prevent his approach for the purpose of ordering them to quit or to state their names or places of abode, those so offending are liable to an additional penalty⁶.

1 As to the meaning of 'daytime' see PARA 785 note 1.

2 As to the meaning of 'game' in this context see PARA 717.

3 The Game Act 1831 s 31 uses the term 'Christian name'.

4 Game Act 1831 s 31 (amended by the Statute Law Revision (No 2) Act 1888; the Protection of Birds Act 1954 s 15(2), Sch 6; the Wild Creatures and Forest Laws Act 1971 s 1(4), Schedule; and the Statute Law (Repeals) Act 1989). For acts which cannot be challenged see the Game Act 1831 s 35; and PARA 786. As to powers in the case of manors, etc see PARA 808. The employer's other servants have the same powers as his gamekeeper: s 31; see PARA 785.

5 Game Act 1831 s 31 (as amended: see note 4); see further PARA 785 note 4.

6 See the Game Act 1831 s 32; and PARA 787.

UPDATE

803-811 Sundays and Christmas Day ... Powers as to daytime poaching

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(5) GAMEKEEPERS/(ii) Powers of Gamekeepers/812. Powers as to night poaching.

812. Powers as to night poaching.

A gamekeeper has the following powers of arrest at night¹, but only on land of which his employer is either lord of the manor, owner, or occupier².

If he or any of his assistants finds upon such land, whether open or inclosed, or upon any part of any public road, highway, or path or the sides thereof, or at the openings, outlets, or gates from the land into any such road, highway, or path, any person unlawfully taking or destroying game³ or rabbits, he may seize and arrest him there, or in case of pursuit in any place to which he may have escaped therefrom, and deliver him as soon as may be to a policeman, with a view to his being brought before two justices of the peace⁴.

A gamekeeper has the same right of arrest on the spot or after pursuit if he finds anyone either actually on or entering on such land with a gun, net, engine or other instrument for the purpose of taking or destroying game⁵. Rabbits are not here comprised in the term 'game', but the gamekeeper or his assistants may arrest offenders actually on or entering on such land, whether with or without nets, engines or other instruments, for the purpose of destroying game or rabbits, if the offenders are three or more in number and any one of them is armed with an offensive weapon⁶.

Gamekeepers whose employers are neither owners nor occupiers, but merely have shooting rights, have no such right of arrest⁷.

1 As to the meaning of 'night' see PARA 791 note 4.

2 Night Poaching Act 1828 s 2 (amended by the Statute Law Revision (No 2) Act 1888; the Wild Creatures and Forest Laws Act 1971 s 1(4), Schedule; the Criminal Law Act 1977 ss 15(4)(a), 30(3), 65, Sch 12; and by virtue of the Criminal Justice Act 1982 s 46); Night Poaching Act 1844 s 1 (amended by the Statute Law Revision Act 1891). Any other servant of the employer has the same rights: Night Poaching Act 1828 s 2 (as so amended); Night Poaching Act 1844 s 1 (as so amended). A gamekeeper who is appointed by an agent who was himself appointed by the lord of the manor has sufficient authority from the lord to arrest night poachers: *R v King* (1884) 48 JP 149.

3 As to the meaning of 'game' see PARA 717 text and note 3.

4 Night Poaching Act 1828 ss 1, 2 (s 1 amended by the Statute Law Revision (No 2) Act 1888; the Criminal Law Act 1977 ss 15, 30, Sch 1; and by virtue of the Criminal Justice Act 1982 ss 37, 46; Night Poaching Act 1828 s 2 as amended (see note 2)); Night Poaching Act 1844 s 1 (as amended: see note 2). The keeper must not wait on the highway for poachers to emerge thereon from his employer's lands on which they have been poaching, although he may pursue them from the land and then arrest them anywhere: *R v Meadham and Haines* (1848) 2 Car & Kir 633. Notice that he intends to arrest the offenders is not required, nor is the employer's written authority: *R v Payne, Russell and Everett* (1833) 1 Mood CC 378; *R v Price* (1835) 7 C & P 178.

5 Night Poaching Act 1828 ss 1, 2 (as amended: see notes 2, 4). Snares and nets etc are ejusdem generis: *Allen v Thompson* (1870) LR 5 QB 336.

6 Being or entering on land in these circumstances is an offence under the Night Poaching Act 1828 s 9; see PARA 793. Though no power of arrest is expressly mentioned in that section it is to be implied, as the offence is merely an aggravation of that under s 1: *R v Ball* (1832) 1 Mood CC 330. As to what is an offensive weapon see PARA 793 note 8.

7 *R v Addis* (1834) 6 C & P 388; *R v Price* (1951) 15 JP 149; and see *R v Wood* (1859) 1 F & F 470.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(5) GAMEKEEPERS/(ii) Powers of Gamekeepers/813. Other powers of arrest.

813. Other powers of arrest.

Except in the cases and within the limits dealt with in the preceding paragraphs¹ a gamekeeper has no special powers of arrest. Outside the limits of his employer's ground a gamekeeper may arrest only with the authority of the owner or gamekeeper of the land on which the offender is found, unless he has pursued the offender from his own employer's ground², but he has the right, in common with everyone else in specific circumstances, of arresting anyone who is in the act of committing an indictable offence³ (or anyone whom he has reasonable grounds for suspecting to be committing such an offence), and anyone who is guilty of the offence (or anyone whom he has reasonable grounds for suspecting to be guilty of it) where an indictable offence has been committed⁴. Additionally a gamekeeper (again, like everyone else) may arrest a person for a breach of the peace committed in his presence, or where he reasonably believes such a breach will be committed in the immediate future, or where a breach has been committed and it is reasonably believed a renewal is threatened⁵.

1 See PARAS 811-812.

2 *R v Davis* (1837) 7 C & P 785.

3 'Indictable offence' is not defined in the Police and Criminal Evidence Act 1984 s 24A; see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1102.

4 See the Police and Criminal Evidence Act 1984 s 24A (added by the Serious Organised Crime and Police Act 2005 s 110(1)) and **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

5 *Albert v Lavin* [1982] AC 546, [1981] 3 All ER 878, HL; *R v Howell* [1982] QB 416, [1981] 3 All ER 383; Police and Criminal Evidence Act 1984 s 25(6).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(5) GAMEKEEPERS/(ii) Powers of Gamekeepers/814. Right to protect employer's property.

814. Right to protect employer's property.

A gamekeeper is entitled to take such steps as are necessary to protect his employer's property, and to this end, when that property is threatened by a real and imminent danger, may take reasonable steps to protect it, even if it transpires that in the event those steps were not necessary¹.

¹ See *Cope v Sharpe (No 2)* [1912] 1 KB 496, CA, where a gamekeeper employed by a shooting tenant was held justified in burning strips of heather on the landlord's land to arrest a fire threatening game to which the tenant was entitled. The fire was put out before it reached the burnt strip.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(5) GAMEKEEPERS/(ii) Powers of Gamekeepers/815. Killing of gamekeepers.

815. Killing of gamekeepers.

The principles relating to the offence committed where officers of justice are killed as the result of intentional forcible opposition to them in the discharge of their duties apply where gamekeepers are killed in the discharge of their statutory powers of arrest¹.

¹ For the principles referred to see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**. See also the following cases concerning the unlawful killing of gamekeepers: *R v Whithorne* (1828) 3 C & P 394; *R v Ball* (1832) 1 Mood CC 330; *R v Warner* (1833) 1 Mood CC 380; *R v Wesley* (1859) 1 F & F 528.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/4. GAME RIGHTS/(6) DEALING IN GAME/816. Food production data.

(6) DEALING IN GAME

816. Food production data.

Although the requirement for persons dealing in game to hold licences has been abolished¹, European legislation² imposes obligations on food and feed business operators as to the traceability of, inter alia, food and food-producing animals³, which has an impact on persons selling game wholesale or retail. Food and feed business operators must be able to identify any person from whom they have been supplied with a food-producing animal, which includes game⁴. To this end, such operators must have in place systems and procedures which allow for this information to be made available to the competent authorities on demand⁵. Food and feed business operators must also have in place systems and procedures to identify the other businesses to which their products have been supplied, and this information must be made available to the competent authorities on demand⁶. Food which is placed on the market or is likely to be placed on the market in the Community must be adequately labelled or identified to facilitate its traceability, through relevant documentation or information in accordance with the relevant requirements of more specific provisions⁷.

1 Ie the Game Licences Act 1860 ss 13-16A (repealed by SI 2007/2007).

2 Ie European Parliament and Council Regulation 178/2002 (OJ L31, 1.2.2002, p 1) laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. See generally **AGRICULTURAL PRODUCTION AND MARKETING; FOOD**.

3 See European Parliament and Council Regulation 178/2002 (OJ L31, 1.2.2002, p 1) art 18; and **FOOD**.

4 See European Parliament and Council Regulation 178/2002 (OJ L31, 1.2.2002, p 1) art 18(2).

5 See European Parliament and Council Regulation 178/2002 (OJ L31, 1.2.2002, p 1) art 18(2).

6 See European Parliament and Council Regulation 178/2002 (OJ L31, 1.2.2002, p 1) art 18(3).

7 See European Parliament and Council Regulation 178/2002 (OJ L31, 1.2.2002, p 1) art 18(4).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/(1) IN GENERAL/817. Animal welfare generally.

5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY

(1) IN GENERAL

817. Animal welfare generally.

Various statutes have made provision for animal welfare and the protection of animals from cruelty. Until recently, the principal such statute was the Protection of Animals Act 1911¹, but that has now largely been superseded by the Animal Welfare Act 2006².

The Animal Welfare Act 2006 creates a number of offences in relation to its aims of the prevention of harm to animals³ and the promotion of the welfare of animals⁴, upon conviction of which the offender is liable to a fine or imprisonment or both; and in addition orders may be made for deprivation of ownership⁵, disqualification from owning or keeping animals⁶, the seizure⁷ or destruction⁸ of animals, the forfeiture of equipment used in offences⁹, and the cancellation of, or disqualification from holding, a licence¹⁰. Extensive powers of inspection, search and seizure are conferred by the Act in relation to animals in distress¹¹, animal fights¹² and other offences¹³; in relation to licences and registration¹⁴; for the inspection of farm premises¹⁵; and to ensure compliance with Community obligations¹⁶. The Animal Welfare Act 2006 also provides for the registration and licensing of activities involving animals¹⁷, for the issue of codes of practice to provide practical guidance in respect of any provision made by or under the Act¹⁸, and for the appointment of inspectors¹⁹.

Upon conviction of certain offences under other statutes the court may cancel a licence to keep a pet shop, and disqualify the offender from keeping a pet shop²⁰. Likewise it may cancel a licence to keep, or disqualify a person for keeping, an animal boarding establishment²¹ or a riding establishment²².

These provisions apply to all animals, as variously defined therein²³; and decisions under the earlier Acts by which it was held that wild animals, even though reclaimed or in captivity, were not protected are not now applicable. Wild animals are not within the Acts, however, unless in captivity or confinement²⁴.

A person may be charged and convicted on one summons with having cruelly ill-treated a number of animals, for instance five cows, on a certain date. An information should not contain more than one offence²⁵, but it is not necessary to have a separate summons in respect of each animal where the offences in respect of all arise out of substantially one act²⁶; in such case there cannot be a separate conviction in respect of each animal²⁷. One summons may be issued against the same person in respect of several informations²⁸.

1 See the Protection of Animals Act 1911, which consolidated with amendments and extensions the enactments previously in force and has now largely been replaced by the Animal Welfare Act 2006. The 1911 Act has been supplemented by the Animals (Cruel Poisons) Act 1962 (see PARA 864 note 3).

Other Acts dealing with cruelty to animals are the Performing Animals (Regulation) Act 1925 (see PARA 873), the Cinematograph Films (Animals) Act 1937 (see PARA 874), the Docking and Nicking of Horses Act 1949 (see PARA 1086), the Pet Animals Act 1951 (see PARAS 936-937), the Pests Act 1954 s 12 (myxomatosis: see PARA 865), the Animal Boarding Establishments Act 1963 (see PARA 938), the Riding Establishments Act 1964 (see PARAS 940-942), the Farriers (Registration) Act 1975 (see PARA 863), the Wildlife and Countryside Act 1981 (see PARA 994 et seq), the Animals (Scientific Procedures) Act 1986 (see PARA 875 et seq), the Protection of Badgers Act 1992 (see PARAS 984-989), the Wild Mammals (Protection) Act 1996 (see PARA 1017), and the Fur Farming (Prohibition) Act 2000 (see PARA 867). For provisions governing the slaughter of animals see **FOOD**.

2 The Animal Welfare Act 2006 makes new provision and repealed a number of earlier provisions. All but a few provisions are in force: see s 68; and the Animal Welfare Act 2006 (Commencement No 1) (England) Order 2007, SI 2007/499; the Animal Welfare Act 2006 (Commencement No 1) (Wales) Order 2007, SI 2007/1030; the Animal Welfare Act 2006 (Commencement No 2 and Saving and Transitional Provisions) (England) Order 2007, SI 2007/2711; and the Animal Welfare Act 2006 (Commencement No 2 and Saving and Transitional Provisions) (Wales) Order 2007, SI 2007/3065. For transitional provisions and savings see the Animal Welfare Act 2006 s 66. The Secretary of State and the Welsh Ministers may by order make such transitional provision or savings as are considered necessary or expedient in connection with the coming into force of any provision of the Act: s 66(1). For such an order see the Animal Welfare Act 2006 (Commencement No 2 and Saving and Transitional Provisions) (Wales) Order 2007, SI 2007/3065.

3 See the Animal Welfare Act 2006 ss 4-8; and PARAS 826-830.

4 See the Animal Welfare Act 2006 ss 9-12; and PARAS 831-833.

5 See the Animal Welfare Act 2006 s 33; and PARA 851.

6 See the Animal Welfare Act 2006 s 34; and PARA 852.

7 See the Animal Welfare Act 2006 ss 35, 36; and PARA 853.

8 See the Animal Welfare Act 2006 s 37; and PARA 854.

9 See the Animal Welfare Act 2006 s 40; and PARA 856.

10 See the Animal Welfare Act 2006 s 42; and PARA 858.

11 See the Animal Welfare Act 2006 ss 18-20; and PARAS 837-839.

12 See the Animal Welfare Act 2006 s 22; and PARA 841.

13 See the Animal Welfare Act 2006 ss 23, 52, Sch 2; and PARA 842.

14 See the Animal Welfare Act 2006 ss 25, 26, 27; and PARAS 843-844.

15 See the Animal Welfare Act 2006 s 28; and PARA 845.

16 See the Animal Welfare Act 2006 s 29; and PARA 844.

17 See the Animal Welfare Act 2006 s 13, Sch 1; and PARAS 834-836.

18 See the Animal Welfare Act 2006 ss 14-17; and PARA 822.

19 See the Animal Welfare Act 2006 s 51; and PARA 823.

20 See the Pet Animals Act 1951 s 5(3); and PARA 937.

21 See the Animal Boarding Establishments Act 1963 s 3(3); and PARA 938.

22 See the Riding Establishments Act 1964 s 4(3); and PARA 942.

23 In the Animal Welfare Act 2006, except s 1(4), (5), 'animal' means a vertebrate other than man (ss 1(1), 62(1)), but nothing in the Act applies to an animal while it is in its foetal or embryonic form (s 1(2)). For these purposes, 'vertebrate' means any animal of the Sub-phylum Vertebrata of the Phylum Chordata and 'invertebrate' means any animal not of that Sub-phylum: s 1(5). See further PARA 821 note 1. Certain provisions of the Animal Welfare Act 2006 (ss 4, 5, 7, 8, 18, 19) apply in relation to 'protected animals'. An animal is a 'protected animal' for the purposes of that Act if (1) it is of a kind which is commonly domesticated in the British Islands; (2) it is under the control of man whether on a permanent or temporary basis; or (3) it is not living in a wild state: s 2. As to the British Islands see PARA 747 note 5. For the purposes of the Cinematograph Films (Animals) Act 1937, 'animal' means a protected animal within the meaning of the Animal Welfare Act 2006: Cinematograph Films (Animals) Act 1937 s 1(4)(b) (substituted by the Animal Welfare Act 2006 s 64, Sch 3 para 2).

In the Protection of Animals Act 1911, 'domestic animal' means any horse (including any mare, gelding, pony, foal, colt, filly or stallion), ass, mule, bull (including any cow, bullock, heifer, calf, steer or ox), sheep (including any lamb, ewe or ram), pig (including any boar, hog or sow), goat (including a kid), dog (including any bitch, sapling or puppy), cat (including a kitten), or fowl (including any cock, hen, chicken, capon, turkey, goose, gander, duck, drake, guineafowl, peacock, peahen, swan or pigeon), or any other animal of whatsoever kind or

species, whether a quadruped or not, which is tame or which has been or is being sufficiently tamed to serve some purpose for man's use: s 15(b), (d), (e).

In the Performing Animals (Regulation) Act 1925 'animal' does not include invertebrates (s 5(1)). In the Docking and Nicking of Horses Act 1949 'horse' means stallion, gelding, colt, mare, filly, pony, mule and hinny (s 3), and in the Riding Establishments Act 1964 'horse' has the same meaning, excluding hinny and adding foal, ass and jennet (s 6(4)). In the Pet Animals Act 1951 'animal' includes any description of vertebrate (s 7(3)); in the Animals (Cruel Poisons) Act 1962 it means any mammal (s 3); in the Animal Boarding Establishments Act 1963 it means any dog or cat (s 5(2)); the Animals (Scientific Procedures) Act 1986 covers 'protected animals', namely any living vertebrate other than man (s 1(1)).

24 *Crown Prosecution Service v Barry* (1989) 153 JP 557, sub nom *DPP v Barry* [1989] Crim LR 645. A whale temporarily stranded without the agency of man and surrounded by people was held not to be in captivity or close confinement in *Steele v Rogers* (1912) 106 LT 79. A stag hunted and captured and then killed was held not to have become, at the time of the killing, in a state of captivity: *Rowley v Murphy* [1964] 2 QB 43, [1964] 1 All ER 50, DC. According to the definition of 'protected animal' in the Animal Welfare Act 2006 s 2 (see note 23), an animal is not protected if it is living in a wild state.

A wild animal which is temporarily unable to escape, or has been restrained with a view to capturing it, is not a 'captive animal' within the former legislation, as there has to be some period of time prior to capture during which acts of dominion are exercised over it: *Rowley v Murphy* [1964] 2 QB 43, [1964] 1 All ER 50, DC; *Steele v Rogers* (1912) 106 LT 79; *Barrington v Colbert* (1997) 162 JP 642.

See also *Budge v Parsons* (1863) 3 B & S 382 (fighting cocks), and *Colam v Pagett* (1883) 12 QBD 66 (linnets kept as decoys), decisions made under the previous legislation, holding that the subjects in each case were domestic animals. See, however, PARA 818.

For provisions affording the protection for certain wild animals from cruelty, see the Wild Mammals (Protection) Act 1996; and PARA 1017.

25 *Edwards v Jones* [1947] KB 659, [1947] 1 All ER 830, DC.

26 *R v Cable, ex p O'Shea* [1906] 1 KB 719.

27 *R v Rawson* [1909] 2 KB 748.

28 See the Magistrates' Courts Rules 1981, SI 1981/552, r 98(3); and **MAGISTRATES** vol 29(2) (Reissue) PARA 688.

UPDATE

817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/(1) IN GENERAL/818. Protection of animal and bird life generally.

818. Protection of animal and bird life generally.

The provisions for the protection of birds and other wild animals¹, of deer² and badgers³, and of game⁴ are discussed elsewhere in this title. These provisions give a large measure of protection to animal and bird life generally, including protecting it from acts of cruelty.

Certain other provisions also protect animal and bird life generally. Thus under the Pests Act 1954 the use and sale of spring traps for the killing or taking of animals are prohibited unless the traps are of an approved type⁵; and further protection is enjoyed by virtue of the National Parks and Access to the Countryside Act 1949, under which living creatures of any description in nature reserves may be protected by byelaws of the appropriate conservation body, and those byelaws may also prohibit or restrict the shooting of any birds within an area surrounding or adjoining a nature reserve which appears to the body requisite for the protection of the reserve⁶.

1 Ie under the Wildlife and Countryside Act 1981 Pt I (ss 1-27), and the Wild Mammals (Protection) Act 1996. See, as to birds, PARA 994 et seq, and as to other wild animals, PARA 1015 et seq.

2 Ie under the Deer Act 1991: see PARA 973 et seq.

3 Ie under the Protection of Badgers Act 1992: see PARA 984 et seq.

4 See PARA 763 et seq.

5 See the Pests Act 1954 s 8. For orders made approving various traps, and as to trapping generally, see PARA 1021.

6 National Parks and Access to the Countryside Act 1949 s 20(2)(b), (c) (amended by the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 para 15(d)). See further **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 672. As to the appropriate conservation bodies, ie Natural England and the Countryside Council for Wales, see the National Parks and Access to the Countryside Act 1949 s 15A (added by the Environmental Protection Act 1990 s 132, Sch 9 para 1(2); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 13); and **OPEN SPACES AND COUNTRYSIDE**.

UPDATE

817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/(1) IN GENERAL/819. Intention and cruelty.

819. Intention and cruelty.

Except for the offence of administering poison¹ and certain offences relating to animal fights², the Animal Welfare Act 2006 does not expressly refer to wilfulness or intention in the mind of the offender, and the offences which it creates consist in the doing of forbidden acts or causing³ or permitting⁴ them to be done with the qualification, in the case of causing suffering, that the suffering is unnecessary⁵. Thus, in general, an intention to commit cruelty need not be proved⁶. On the other hand, if the charge is of causing or permitting an act to be done, guilty knowledge must be shown, or the causing or procuring will not be proved⁷.

The meaning of the adverb 'cruelly' has never been expressly defined in legislation. Under the nineteenth century legislation, it was taken to mean 'the unnecessary abuse of any animal'⁸, and this interpretation has been endorsed⁹. By the beginning of the twentieth century it appeared to have been established that 'cruelty' had the meaning not only of cruel in the sense of painning the animal, but cruel in the sense that it is unnecessary¹⁰. The courts have continued to apply this established interpretation, suggesting that the word 'cruelly' could not be better defined than 'causing unnecessary suffering'¹¹. The Animal Welfare Act 2006 does not use the words 'cruel' or 'cruelly', but instead refers to 'suffering'¹².

1 le the offence of administering poison etc 'knowing' it to be poison: see the Animal Welfare Act 2006 s 7; and PARA 829. Cf the offence of wilfully causing poisonous or injurious substances to be taken by an animal under the Protection of Animals Act 1911 s 1(1)(d) (repealed). See *Dee v Yorke* (1914) 78 JP 359, where drugs were administered, but no unnecessary suffering was caused, the charge being, it seems, under the Protection of Animals Act 1911 s 1(1)(a) (repealed).

2 See the Animal Welfare Act 2006 s 8(1)(b), (c), (d), (g), (3)(d); and PARA 830.

3 See the Animal Welfare Act 2006 ss 4(1)(a), (2)(b), 5(1)(b), 6(1)(b), 7(1)(b), (2)(b), 8(1)(a); and PARAS 826-830.

4 See the Animal Welfare Act 2006 ss 4(2)(c), 5(2)(c), 6(2)(c), 7(2)(c); and PARAS 826-829.

5 See the Animal Welfare Act 2006 s 4(1)(d), (2)(d); and PARA 826.

6 *Duncan v Pope* (1899) 80 LT 120. See also the Scottish case of *Easton v Anderson* 1949 JC 1.

7 See PARA 820.

8 *Budge v Parsons* (1863) 3 B & S 382 at 385 per Wightman J.

9 le in the leading case of *Ford v Wiley* (1889) 23 QBD 203, 209 and 215 per Lord Coleridge CJ: 'The mere infliction of pain, even if extreme pain, is manifestly not by itself sufficient' to amount to cruelty; and quoting Wightman J in *Budge v Parsons* (1863) 3 B & S 382 at 385 ('If the suffering inflicted is necessary it may be inflicted; if it is not, it is 'unnecessary abuse of an animal'').

10 See *Bowyer v Morgan* (1906) 70 JP 253, 255 per Lord Alverstone CJ, who noted that there was 'a long series of decisions' leading thereto.

11 See *Barnard v Evans* [1925] 2 KB 794, DC. The term is used in the Animal Welfare Act 2006 s 4: see PARA 826. See also the following cases on the Protection of Animals Act 1911 s 1 (repealed): *Bandeira v Royal Society for the Prevention of Cruelty to Animals* (2000) 164 JP 307, DC; *Hussey v Royal Society for the Prevention of Cruelty to Animals* [2007] EWHC 1083 (Admin), [2007] All ER (D) 57 (Mar) (sufficient to establish that the defendant had been aware of the condition of the dog); *Nash v Birmingham Crown Court* [2005] EWHC 338 (Admin), sub nom *Nash v RSPCA* 169 JP 157 (person charged is entitled to know what act or omission is alleged to have caused the unnecessary suffering alleged to an animal or animals). In *Royal Society for the Prevention of Cruelty to Animals v Shinton* [2003] EWHC 1696 (Admin), 167 JP 512, [2003] All ER (D) 388 (Jun), it was held

that where a trap using a decoy bird had been used lawfully within the terms of a licence under the Wildlife and Countryside Act 1981, this did not mean that an offence of causing unnecessary suffering to the decoy bird under the Protection of Animals Act 1911 s 1(1)(a) (repealed) could not be made out.

12 See eg the Animal Welfare Act 2006 s 4 (causing unnecessary suffering: PARA 826), s 9(1)(e) (animal's need to be protected from pain, suffering, injury and disease: PARA 831), s 18 (powers in relation to animals in distress: PARA 837), s 19 (power of entry where protected animal is suffering or is likely to suffer: PARA 838), s 40(2)(a) (forfeiture of anything designed or adapted for causing suffering to an animal: PARA 856). As to the meaning of 'suffer' see PARA 821 note 1.

UPDATE

817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/(1) IN GENERAL/820. Causing or permitting cruelty.

820. Causing or permitting cruelty.

Guilty knowledge must be proved if the charge is of causing or procuring the cruelty¹. It is not sufficient to show that a defendant would have known of the suffering of the animal had he properly performed his duties². The mere fact that it is the duty of a man in the position of a manager to see that horses are fit to be worked does not render him liable to be convicted when they are worked in an unfit state, without proof of his knowledge of the actual cruelty³. Where the defendant visited cattle and failed to loosen their head-ropes after disembarkation, and one was found suffering from a bad wound, the conviction was quashed in the absence of proof of his knowledge of the animal's suffering⁴. Where a veterinary surgeon certified a mare as fit for work, and was subsequently summoned for cruelly ill-treating the mare by causing it to be worked in an unfit state, the magistrate found that he knowingly counselled the owner to cause the act of cruelty to be perpetrated, but that he did not himself cause it to be perpetrated, and acquitted him; the Divisional Court remitted the case for conviction on the ground that under what is now the Magistrates' Courts Act 1980⁵ the veterinary surgeon, having counselled an act of cruelty to be committed, was liable to be proceeded against as if he were a principal offender⁶. Where a minor owned a cat which injured its tail and her father refused to allow it veterinary care, causing it unnecessary suffering, it was held that it was reasonable for the child not to go against her father's decision and she was acquitted of permitting the unnecessary suffering⁷.

1 A lion tamer was convicted where a pony was attacked by one of the performing lions, but the court was careful not to lay down a general rule that it is an offence to put a domestic animal with a tamed beast; there must be some evidence of mens rea: *Thielbar v Craigen* (1905) 69 JP 421.

2 As to causing unnecessary suffering under the Animal Welfare Act 2006 see PARA 826.

3 *Small v Warr* (1882) 47 JP 20. Cf *Greenwood v Backhouse* (1902) 86 LT 566; *Hughes v Mooney* (1909) 43 ILT 127 (non-liability of company secretary).

4 *Elliott v Osborn* (1891) 65 LT 378.

5 See the Magistrates' Courts Act 1980 s 44; and **MAGISTRATES**.

6 *Benford v Sims* [1898] 2 QB 641. This decision proceeded upon the very special findings in the case, and is not an authority for holding that every veterinary surgeon who gives a wrong opinion is liable to be convicted if cruelty in fact results: *Benford v Sims* [1898] 2 QB 641 at 646 per Channell J.

7 *Royal Society for the Prevention of Cruelty to Animals v C* [2006] EWHC 1069 (Admin), 170 JP 463, [2006] All ER (D) 299 (Mar): the test to establish whether the respondent had acted unreasonably by permitting unnecessary suffering to be caused to the animal that she owned was not to be confined so that it had to be applied objectively; it could include a subjective element. Therefore, although the suffering of the animal had to be judged objectively, it was for the justices to decide whether any explanation given by the defendant was or was not reasonable by having regard to subjective considerations.

UPDATE

817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/(i) In general/821. Responsibility for animals.

(2) ANIMAL WELFARE UNDER THE

(i) In general

821. Responsibility for animals.

A duty is imposed by the Animal Welfare Act 2006 on a person responsible for an animal¹ to ensure its welfare². References to a person responsible for an animal are to a person responsible for an animal whether on a permanent or temporary basis³, and references to being responsible for an animal include being in charge of it⁴. For the purposes of the Act, a person who owns an animal is always to be regarded as being a person who is responsible for it⁵, and a person is to be treated as responsible for any animal for which a person under the age of 16 years of whom he has actual care and control is responsible⁶.

1 As to the meaning of 'animal' in the Animal Welfare Act 2006 see PARA 817 note 23. The appropriate national authority may by regulations for all or any of the purposes of the Animal Welfare Act 2006 (1) extend the definition of 'animal' so as to include invertebrates of any description; (2) make provision in lieu of s 1(2) as respects any invertebrates included in the definition of 'animal'; (3) amend s 1(2) to extend the application of the Act to an animal from such earlier stage of its development as may be specified in the regulations: s 1(3). The power under head (1) or (3) may only be exercised if the appropriate national authority is satisfied, on the basis of scientific evidence, that animals of the kind concerned are capable of experiencing pain or suffering: s 1(4). 'Appropriate national authority' means (a) in relation to England, the Secretary of State; (b) in relation to Wales, the Welsh Ministers: s 62(1); Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the Secretary of State see PARA 705; and as to the Welsh Ministers see PARA 706. 'Suffering' means physical or mental suffering and related expressions are to be construed accordingly: Animal Welfare Act 2006 s 62(1).

The power to make such regulations is exercisable by statutory instrument: s 61(1). As respects England, no such regulations may be made by the Secretary of State unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament: s 61(2). As to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

2 See the Animal Welfare Act 2006 s 9; and PARA 826.

3 Animal Welfare Act 2006 s 3(1). In the Animal Welfare Act 2006, references to responsibility, in relation to an animal, are to be read in accordance with s 3: s 62(4).

4 Animal Welfare Act 2006 s 3(2).

5 Animal Welfare Act 2006 s 3(3).

6 Animal Welfare Act 2006 s 3(4).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/(i) In general/822. Codes of practice.

822. Codes of practice.

The appropriate national authority¹ may issue, and may from time to time revise, codes of practice for the purpose of providing practical guidance in respect of any provision made by or under the Animal Welfare Act 2006². The authority responsible for issuing a code of practice must publish the code, and any revision of it, in such manner as it considers appropriate³. A person's failure to comply with a provision of a code of practice does not of itself render him liable to proceedings of any kind⁴, but in any proceedings against a person for an offence under the Animal Welfare Act 2006 or an offence under regulations made under the Act⁵, (1) failure to comply with a relevant provision of a code of practice may be relied upon as tending to establish liability; and (2) compliance with a relevant provision of such a code of practice may be relied upon as tending to negative liability⁶.

Where the Secretary of State⁷ proposes to issue (or revise) a code of practice, he must (a) prepare a draft of the code (or revised code); (b) consult about the draft such persons appearing to him to represent any interests concerned as he considers appropriate; and (c) consider any representations made by them⁸. If following consultation the Secretary of State decides to proceed with a draft (either in its original form or with such modifications as he thinks fit), he must lay a copy of it before Parliament⁹. If, within the 40-day period¹⁰ during which it is to be considered by Parliament, either House of Parliament resolves not to approve a draft, the Secretary of State must take no further steps in relation to it¹¹. If, within the 40-day period, neither House resolves not to approve a draft laid before it, the Secretary of State must issue (or revise) the code in the form of the draft¹². A code (or revised code) comes into force on such day as the Secretary of State may by order appoint¹³.

Where the Welsh Ministers¹⁴ propose to issue (or revise) a code of practice, they must (i) prepare a draft of the code (or revised code); (ii) consult about the draft such persons appearing to them to represent any interests concerned as they consider appropriate; and (iii) consider any representations made by them¹⁵. The Welsh Ministers may issue (or revise) a code either in the form of the draft or with such modification as they think fit¹⁶. A code (or revised code) comes into force in accordance with its provisions¹⁷.

The appropriate national authority may by order revoke a code of practice issued by it¹⁸. Before making such an order, the appropriate national authority must consult such persons appearing to the authority to represent any interests concerned as the authority considers appropriate¹⁹, but this does not apply in relation to an order revoking a code of practice in connection with its replacement by a new one²⁰.

1 As to the meaning of 'appropriate national authority' see PARA 821 note 1.

2 Animal Welfare Act 2006 s 14(1).

3 Animal Welfare Act 2006 s 14(2).

4 Animal Welfare Act 2006 s 14(3).

5 Ie under the Animal Welfare Act 2006 s 12 or s 13: see PARAS 833-836.

6 Animal Welfare Act 2006 s 14(4).

7 As to the Secretary of State see PARA 705.

8 Animal Welfare Act 2006 s 15(1).

9 Animal Welfare Act 2006 s 15(2).

10 'The 40-day period', in relation to a draft, means (1) if the draft is laid before the Houses on different days, the period of 40 days beginning with the later of the two days; and (2) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House, in either case no account being taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days: Animal Welfare Act 2006 s 15(8).

11 Animal Welfare Act 2006 s 15(3). This does not prevent a new draft of a code (or revised code) from being laid before Parliament: s 15(6).

12 Animal Welfare Act 2006 s 15(4).

13 Animal Welfare Act 2006 s 15(5). An order under s 15(5) may include transitional provision or savings: s 15(7).

14 As to the Welsh Ministers see PARA 706.

15 Animal Welfare Act 2006 s 16(1).

16 Animal Welfare Act 2006 s 16(2).

17 Animal Welfare Act 2006 s 16(3). A code (or revised code) may include transitional provision or savings: s 16(4).

18 Animal Welfare Act 2006 s 17(1). An order under s 17(1) may include transitional provision or savings: s 17(2). The power of the Secretary of State, but not of the Welsh Ministers, to make an order under s 17(1) is exercisable by statutory instrument: s 61(1). No order under s 17(1) may be made by the Secretary of State unless a draft of the instrument containing the order has been laid before Parliament: s 61(3). This does not, however, apply in relation to an order revoking a code of practice in connection with its replacement by a new one: s 61(4).

19 Animal Welfare Act 2006 s 17(3).

20 Animal Welfare Act 2006 s 17(4).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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823. Inspectors.

The appropriate national authority¹ or a local authority² may appoint persons as inspectors for the purposes of particular provisions of the Animal Welfare Act 2006³. In appointing a person to be an inspector for purposes of the Act, a local authority must have regard to guidance issued by the appropriate national authority⁴. The appropriate national authority may, in connection with guidance to local authorities, draw up a list of persons whom the authority considers suitable for appointment by a local authority to be an inspector for purposes of the Act⁵. A person may be included in such a list as suitable for appointment as an inspector for all the purposes of the Animal Welfare Act 2006 or only for such one or more of those purposes as may be specified in the list⁶. An inspector is not liable in any civil or criminal proceedings for anything done in the purported performance of his functions under the Act if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it⁷; but relief from liability of an inspector does not affect any liability of any other person in respect of the inspector's act⁸.

1 As to the meaning of 'appropriate national authority' see PARA 821 note 1.

2 'Local authority' means (1) in relation to England, a county council, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly; (2) in relation to Wales, a county council or a county borough council: Animal Welfare Act 2006 s 62(1).

3 See the Animal Welfare Act 2006 s 51(1).

4 Animal Welfare Act 2006 s 51(2).

5 Animal Welfare Act 2006 s 51(3).

6 Animal Welfare Act 2006 s 51(4).

7 Animal Welfare Act 2006 s 51(5).

8 Animal Welfare Act 2006 s 51(6).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/(i) In general/824. Exemptions.

824. Exemptions.

Exemptions from the provisions of the Animal Welfare Act 2006 are given in respect of specific activities. Nothing in that Act applies to anything lawfully done under the Animals (Scientific Procedures) Act 1986¹. No power of entry, inspection or search conferred by or under the Animal Welfare Act 2006, except for any such power conferred in relation to the inspection of farm premises², may be exercised in relation to a place which is designated³ as a scientific procedure establishment or designated⁴ as a breeding establishment or as a supplying establishment⁵. The duty imposed on the person responsible for an animal to ensure its welfare⁶ does not apply in relation to an animal which (1) is being kept, at a place designated as a scientific procedure establishment, for use in regulated procedures⁷; (2) is being kept, at a place designated as a breeding establishment, for use for breeding animals for use in regulated procedures; (3) is being kept at such a place, having been bred there for use in regulated procedures; or (4) is being kept, at a place designated as a supplying establishment, for the purpose of being supplied for use elsewhere in regulated procedures⁸.

Nothing in the Animal Welfare Act 2006 applies in relation to anything which occurs in the normal course of fishing⁹.

1 Animal Welfare Act 2006 s 58(1). As to the Animals (Scientific Procedures) Act 1986 see PARA 875 et seq.

2 Ie under the Animal Welfare Act 2006 s 28: see PARA 845.

3 Ie under the Animals (Scientific Procedures) Act 1986 s 6: see PARA 880.

4 Ie under the Animals (Scientific Procedures) Act 1986 s 7: see PARA 881.

5 Animal Welfare Act 2006 s 58(2).

6 Ie under the Animal Welfare Act 2006 s 9: see PARA 831.

7 As to the meaning of 'regulated procedure' see PARA 876; definition applied by the Animal Welfare Act 2006 s 58(4).

8 Animal Welfare Act 2006 s 58(3).

9 Animal Welfare Act 2006 s 59. As to fishing see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 789 et seq.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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825. Application to Crown.

Subject to the following provisions, the Animal Welfare Act 2006 and regulations and orders made under it bind the Crown¹.

No contravention by the Crown of any provision made by or under the Act will make the Crown criminally liable; but the High Court may declare unlawful any act or omission of the Crown which constitutes such a contravention². Nevertheless, the provisions of the Act and of regulations and orders made under it apply to persons in the service of the Crown as they apply to other persons³. If the Secretary of State⁴ certifies that it appears to him appropriate in the interests of national security that powers of entry conferred by or under the Act should not be exercisable in relation to Crown premises⁵ specified in the certificate, those powers will not be exercisable in relation to those premises⁶. No power of entry conferred by or under the Act may be exercised in relation to land belonging to Her Majesty in right of Her private estates⁷.

1 Animal Welfare Act 2006 s 60(1).

2 Animal Welfare Act 2006 s 60(2).

3 Animal Welfare Act 2006 s 60(3).

4 As to the Secretary of State see PARA 705.

5 'Crown premises' means premises held, or used, by or on behalf of the Crown: Animal Welfare Act 2006 s 60(5). 'Premises' includes any place and, in particular, includes any vehicle, vessel, aircraft or hovercraft; and any tent or movable structure: s 62(1).

6 Animal Welfare Act 2006 s 60(4).

7 Animal Welfare Act 2006 s 60(6). The reference to Her Majesty's private estates is to be construed in accordance with the Crown Private Estates Act 1862 s 1 (see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 358): Animal Welfare Act 2006 s 60(7).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(ii) Prevention of Harm

826. Causing unnecessary suffering.

A person commits an offence if (1) an act of his, or a failure of his to act, causes an animal¹ to suffer²; (2) he knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so; (3) the animal is a protected animal³; and (4) the suffering is unnecessary⁴.

A person commits an offence if (a) he is responsible for an animal⁵; (b) an act, or failure to act, of another person causes the animal to suffer; (c) he permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening; and (d) the suffering is unnecessary⁶.

The considerations to which it is relevant to have regard when determining for these purposes whether suffering is unnecessary include⁷:

- 22 (i) whether the suffering could reasonably have been avoided or reduced⁸;
- 23 (ii) whether the conduct which caused the suffering was in compliance with any relevant enactment⁹ or any relevant provisions of a licence or code of practice issued under an enactment¹⁰;
- 24 (iii) whether the conduct which caused the suffering was for a legitimate purpose, such as the purpose of benefiting the animal or the purpose of protecting a person, property or another animal¹¹;
- 25 (iv) whether the suffering was proportionate to the purpose of the conduct concerned¹²;
- 26 (v) whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person¹³.

None of the above provisions applies to the destruction of an animal in an appropriate and humane manner¹⁴.

1 As to the meaning of 'animal' see PARAS 817 note 23, 821 note 1.

2 As to the meaning of 'suffer' see PARA 821 note 1.

3 As to the meaning of 'protected animal' see PARA 817 note 23.

4 Animal Welfare Act 2006 s 4(1). A person guilty of an offence under s 4 is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding £20,000, or to both: s 32(1). In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). At the date at which this volume states the law, no such day had been appointed. As to other penalties of deprivation and disqualification see PARA 851 et seq.

5 As to the meaning of 'person responsible for an animal' see PARA 821.

6 Animal Welfare Act 2006 s 4(2). As to the penalty see note 4.

7 Animal Welfare Act 2006 s 4(3).

8 Animal Welfare Act 2006 s 4(3)(a).

9 'Enactment' includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978: see **STATUTES**): Animal Welfare Act 2006 s 62(1).

10 Animal Welfare Act 2006 s 4(3)(b).

11 Animal Welfare Act 2006 s 4(3)(c).

12 Animal Welfare Act 2006 s 4(3)(d).

13 Animal Welfare Act 2006 s 4(3)(e).

14 Animal Welfare Act 2006 s 4(4).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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827. Mutilation.

A person commits an offence if he carries out a prohibited procedure¹ on a protected animal² or he causes such a procedure to be carried out on such an animal³.

A person commits an offence if (1) he is responsible for an animal⁴; (2) another person carries out a prohibited procedure on the animal; and (3) he permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening⁵.

The above provisions do not apply in such circumstances as the appropriate national authority⁶ may specify by regulations⁷.

None of the above provisions applies to the removal of the whole or any part of a dog's tail⁸.

1 References in the Animal Welfare Act 2006 s 5 to the carrying out of a prohibited procedure on an animal are to the carrying out of a procedure which involves interference with the sensitive tissues or bone structure of the animal, otherwise than for the purpose of its medical treatment: s 5(3).

2 As to the meaning of 'protected animal' see PARA 817 note 23.

3 Animal Welfare Act 2006 s 5(1). A person guilty of an offence under s 5 is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding £20,000, or to both: s 32(1). In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). At the date at which this volume states the law, no such day had been appointed. As to other penalties of deprivation and disqualification see PARA 851 et seq.

4 As to the meaning of 'person responsible for an animal' see PARA 821.

5 Animal Welfare Act 2006 s 5(2). As to the penalty see note 3.

6 As to the meaning of 'appropriate national authority' see PARA 821 note 1.

7 Animal Welfare Act 2006 s 5(4). Before making such regulations, the appropriate national authority must consult such persons appearing to the authority to represent any interests concerned as the authority considers appropriate: s 5(5). The power to make such regulations is exercisable by statutory instrument: s 61(1). As respects England, no regulations under s 5(4) may be made by the Secretary of State unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament: s 61(2). As to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Secretary of State see PARA 705; and as to the Welsh Ministers see PARA 706. As to such regulations see the Mutilations (Permitted Procedures) (England) Regulations 2007, SI 2007/1100; and the Mutilations (Permitted Procedures) (Wales) Regulations 2007, SI 2007/1029.

The Animal Welfare Act 2006 s 5(1), (2) does not apply to procedure listed in the Mutilations (Permitted Procedures) (England) Regulations 2007, SI 2007/1100, Sch 1, providing it is carried out (1) in accordance with any relevant requirement in Sch 2-9; (2) in such a way as to minimise the pain and suffering it causes to the animal; (3) in hygienic conditions; (4) in accordance with good practice; and (5) in accordance with reg 5, where applicable: reg 3 (amended by SI 2008/1426). Such procedures include identification procedures, procedures for the control of reproduction, dehorning, disbudding and tail docking (see the Mutilations (Permitted Procedures) (England) Regulations 2007, SI 2007/1100, Sch 1 (amended by SI 2008/1426)), and separate requirements are imposed in respect of cattle (see the Mutilations (Permitted Procedures) (England) Regulations 2007, SI 2007/1100, Sch 2), pigs (see Sch 3), birds (see Sch 4 (amended by SI 2008/1426)), sheep (see the Mutilations (Permitted Procedures) (England) Regulations 2007, SI 2007/1100, Sch 5 (amended by SI 2008/1426)), goats (see the Mutilations (Permitted Procedures) (England) Regulations 2007, SI 2007/1100, Sch 6 (amended by SI 2008/1426)), horses (see the Mutilations (Permitted Procedures) (England) Regulations 2007, SI 2007/1100, Sch 7), deer (see Sch 8) and other species (see Sch 9). The statutory prohibitions further do not apply where a

prohibited procedure is carried out in an emergency for the purpose of saving the life or relieving the pain of the animal: reg 4(1) (amended by SI 2008/1426). Any such procedure must be carried out in accordance with the Mutilations (Permitted Procedures) (England) Regulations 2007, SI 2007/1100, reg 3, so far as this is practicable in all of the circumstances: reg 4(2). Any procedure permitted under reg 3 to which the Veterinary Surgeons Act 1966 or the Veterinary Surgeons (Exemption) Order 1962, SI 1962/2557, applies (see PARA 1129), with the exception of the procedures referred to in reg 5(2), may only be carried out by a person permitted to carry it out under that legislation: Mutilations (Permitted Procedures) (England) Regulations 2007, SI 2007/1100, reg 5(1) (reg 5 amended by SI 2008/1426). Tail docking, or castration, of pigs may only be carried out by a veterinary surgeon or, where the animal is aged not more than seven days, by a person experienced in performing the techniques involved and who is either a person responsible for the animal or a person employed or engaged by such a person to attend to the animal: Mutilations (Permitted Procedures) (England) Regulations 2007, SI 2007/1100, reg 5(2) (as so amended). Equivalent provision is made in relation to Wales by the Mutilations (Permitted Procedures) (Wales) Regulations 2007, SI 2007/1029, regs 3-5, Schs 1-9.

8 Animal Welfare Act 2006 s 5(6). As to the docking of dogs' tails see PARA 828.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

827 Mutilation

NOTE 7--SI 2007/1029 amended: SI 2008/3094.

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828. Docking of dogs' tails.

A person commits an offence if he removes the whole or any part of a dog's tail, otherwise than for the purpose of its medical treatment, or he causes the whole or any part of a dog's tail to be removed by another person, otherwise than for the purpose of its medical treatment¹. A person commits an offence if (1) he is responsible for a dog²; (2) another person removes the whole or any part of the dog's tail, otherwise than for the purpose of its medical treatment; and (3) he permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening³.

The above provisions do not apply if the dog is a certified working dog⁴ that is not more than five days old⁵. It is a defence for a person accused of an offence under the above provisions to show that he reasonably believed that the dog was one in relation to which the exemption for certified working dogs applies⁶.

A person commits an offence if he owns a certified working dog whose tail has been wholly or partly removed⁷ and fails to take reasonable steps to secure that, before the dog is three months old, it is identified as such in accordance with regulations made by the appropriate national authority⁸.

A person commits an offence if (a) he shows a dog at an event to which members of the public are admitted on payment of a fee; (b) the dog's tail has been wholly or partly removed (in England and Wales or elsewhere); and (c) removal took place on or after the commencement day⁹. It is a defence for a person accused of such an offence to show that he reasonably believed that the event was not one to which members of the public were admitted on payment of an entrance fee, or that the removal took place before the commencement day, or that the dog was one in relation to which the offence does not apply¹⁰.

The appropriate national authority may by regulations make provision about the functions of inspectors¹¹ in relation to certificates for the purposes of these provisions and in relation to the identification of dogs as relevant working dogs¹². Before making such regulations, the appropriate national authority must consult such persons appearing to the authority to represent any interests concerned as the authority considers appropriate¹³.

1 Animal Welfare Act 2006 s 6(1). A person guilty of an offence under s 6(1) or (2) is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding £20,000, or to both: s 32(1). In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). At the date at which this volume states the law, no such day had been appointed. As to other penalties of deprivation and disqualification see PARA 851 et seq.

2 As to the meaning of 'person responsible for an animal' see PARA 821.

3 Animal Welfare Act 2006 s 6(2). As to the penalty see note 1.

4 For the purposes of the Animal Welfare Act 2006 s 6(3), a dog is a certified working dog if a veterinary surgeon has certified, in accordance with regulations made by the appropriate national authority, that the first and second conditions mentioned below are met: s 6(4). 'Veterinary surgeon' means a person registered in the register of veterinary surgeons, or the supplementary veterinary register, kept under the Veterinary Surgeons Act 1966 (see PARA 1133); Animal Welfare Act 2006 s 62(1). As to the meaning of 'appropriate national authority' see PARA 821 note 1. The first condition referred to in s 6(4) is that there has been produced to the veterinary surgeon such evidence as the appropriate national authority may by regulations require for the purpose of showing that the dog is likely to be used for work in connection with (1) law enforcement; (2)

activities of Her Majesty's armed forces; (3) emergency rescue; (4) lawful pest control; or (5) the lawful shooting of animals: s 6(5). The second condition is that the dog is of a type specified for these purposes by regulations made by the appropriate national authority: s 6(6). A person commits an offence if he knowingly gives false information to a veterinary surgeon in connection with the giving of a certificate for the purposes of s 6: s 6(12).

5 Animal Welfare Act 2006 s 6(3).

6 Animal Welfare Act 2006 s 6(7).

7 Referred to as 'a subsection (3) dog', ie a dog whose tail has, on or after the commencement day, been wholly or partly removed without contravening the Animal Welfare Act 2006 s 6(1), because of the application of s 6(3): see s 6(16). 'Commencement day' means the day on which s 6 comes into force: s 6(16). In relation to Wales, the commencement day was 27 March 2007: see the Animal Welfare Act 2006 (Commencement No 1) (Wales) Order 2007, SI 2007/1030, art 2(1)(a). In relation to England, the commencement day was 6 April 2007: see the Animal Welfare Act 2006 (Commencement No 1) (England) Order 2007, SI 2007/499, art 2(2)(b).

8 Animal Welfare Act 2006 s 6(8). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks (see note 1) or a fine not exceeding level 4 on the standard scale, or to both: s 32(4). As to the standard scale see PARA 738 note 1.

9 Animal Welfare Act 2006 s 6(9). As to the penalty see note 8. Where a dog is shown only for the purpose of demonstrating its working ability, s 6(9) does not apply if the dog is a subsection (3) dog: s 6(10).

10 Animal Welfare Act 2006 s 6(11). The text refers to a dog in relation to which s 6(10) (see note 9) applies.

11 As to the appointment of inspectors see PARA 823.

12 Animal Welfare Act 2006 s 6(13). The text refers to identifying dogs as subsection (3) dogs. Power to make regulations under s 6 includes power to make different provision for different cases and to make incidental, supplementary, consequential or transitional provision or savings: s 6(14). The power to make such regulations is exercisable by statutory instrument: s 61(1). As respects England, no regulations under s 6 may be made by the Secretary of State unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament: s 61(2). As to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Secretary of State see PARA 705; and as to the Welsh Ministers see PARA 706. As to regulations made under the Animal Welfare Act 2006 s 6 see the Docking of Working Dogs' Tails (England) Regulations 2007, SI 2007/1120; and the Docking of Working Dogs' Tails (Wales) Regulations 2007, SI 2007/1028.

13 Animal Welfare Act 2006 s 6(15).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (ii) Prevention of Harm/829. Administration of poisons etc.

829. Administration of poisons etc.

A person commits an offence if, without lawful authority or reasonable excuse, he administers any poisonous or injurious drug or substance¹ to a protected animal², knowing it to be poisonous or injurious, or causes any poisonous or injurious drug or substance to be taken by a protected animal, knowing it to be poisonous or injurious³.

A person commits an offence if (1) he is responsible for an animal⁴; (2) without lawful authority or reasonable excuse, another person administers a poisonous or injurious drug or substance to the animal or causes the animal to take such a drug or substance; and (3) he permitted that to happen or, knowing the drug or substance to be poisonous or injurious, he failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening⁵.

1 References to a poisonous or injurious drug or substance include a drug or substance which, by virtue of the quantity or manner in which it is administered or taken, has the effect of a poisonous or injurious drug or substance: Animal Welfare Act 2006 s 7(3).

2 As to the meaning of 'protected animal' see PARA 817 note 23.

3 Animal Welfare Act 2006 s 7(1). A person guilty of an offence under s 7 is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding £20,000, or to both: s 32(1). In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). At the date at which this volume states the law, no such day had been appointed. As to other penalties of deprivation and disqualification see PARA 851 et seq.

4 As to the meaning of 'person responsible for an animal' see PARA 821.

5 Animal Welfare Act 2006 s 7(2). As to the penalty see note 3.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (ii) Prevention of Harm/830. Animal fights.

830. Animal fights.

A person commits an offence¹ if he:

- 27 (1) causes an animal fight² to take place, or attempts to do so³;
- 28 (2) knowingly receives money for admission to an animal fight⁴;
- 29 (3) knowingly publicises a proposed animal fight⁵;
- 30 (4) provides information about an animal fight to another with the intention of enabling or encouraging attendance at the fight⁶;
- 31 (5) makes or accepts a bet on the outcome of an animal fight or on the likelihood of anything occurring or not occurring in the course of an animal fight⁷;
- 32 (6) takes part in an animal fight⁸;
- 33 (7) has in his possession anything designed or adapted for use in connection with an animal fight with the intention of its being so used⁹;
- 34 (8) keeps or trains an animal for use or in connection with an animal fight¹⁰;
- 35 (9) keeps any premises¹¹ for use for an animal fight¹².

A person commits an offence if, without lawful authority or reasonable excuse, he is present at an animal fight¹³.

As from a day to be appointed, a person commits an offence if, without lawful authority or reasonable excuse, he¹⁴:

- 36 (a) knowingly supplies a video recording¹⁵ of an animal fight¹⁶;
- 37 (b) knowingly publishes a video recording of an animal fight¹⁷;
- 38 (c) knowingly shows¹⁸ a video recording of an animal fight to another¹⁹; or
- 39 (d) possesses a video recording of an animal fight, knowing it to be such a recording, with the intention of supplying it²⁰.

However, this does not apply if the video recording is of an animal fight that took place outside Great Britain²¹, or before the commencement date²². Nor does it apply (i) in the case of head (a), to the supply of a video recording for inclusion in a programme service²³; (ii) in the case of head (b) or (c), to the publication or showing of a video recording by means of its inclusion in a programme service; (iii) in the case of head (d), by virtue of intention to supply for inclusion in a programme service²⁴.

1 Animal Welfare Act 2006 s 8(1). A person guilty of an offence under s 8 is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding £20,000, or to both: s 32(1). In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). At the date at which this volume states the law, no such day had been appointed. As to other penalties of deprivation and disqualification see PARA 851 et seq.

2 For these purposes, 'animal fight' means an occasion on which a protected animal is placed with an animal, or with a human, for the purpose of fighting, wrestling or baiting: Animal Welfare Act 2006 s 8(7). As to the meaning of 'protected animal' see PARA 817 note 23. As to the meaning of 'animal' see PARAS 817 note 23, 821 note 1.

3 Animal Welfare Act 2006 s 8(1)(a).

4 Animal Welfare Act 2006 s 8(1)(b).

5 Animal Welfare Act 2006 s 8(1)(c).

6 Animal Welfare Act 2006 s 8(1)(d).

7 Animal Welfare Act 2006 s 8(1)(e).

8 Animal Welfare Act 2006 s 8(1)(f).

9 Animal Welfare Act 2006 s 8(1)(g).

10 Animal Welfare Act 2006 s 8(1)(h).

11 As to the meaning of 'premises' see PARA 825 note 5.

12 Animal Welfare Act 2006 s 8(1)(i).

13 Animal Welfare Act 2006 s 8(2).

14 Animal Welfare Act 2006 s 8(3) (to be brought into force as from a day to be appointed under s 68(3); at the date at which this volume states the law, no such day had been appointed). Provision extending the application of an offence under s 8(3), so far as relating to the provision of information society services, may be made under the European Communities Act 1972 s 2(2) (powers to implement Community obligations by regulations) notwithstanding the limits imposed by Sch 2 para 1(1)(d) on the penalties with which an offence may be punishable on summary conviction: Animal Welfare Act 2006 s 8(6) (to be brought into force as from a day to be appointed under s 68(3); at the date at which this volume states the law, no such day had been appointed). 'Information society services' has the meaning given in European Parliament and Council Directive 2000/31 (OJ L178, 17.7.2000, p 1) on certain legal aspects of information society services, in particular electronic commerce in the Internal Market (Directive on electronic commerce) art 2(a): Animal Welfare Act 2006 s 8(7).

15 For these purposes, 'video recording' means a recording, in any form, from which a moving image may by any means be reproduced and includes data stored on a computer disc or by other electronic means which is capable of conversion into a moving image: Animal Welfare Act 2006 s 8(7). References to supplying or publishing a video recording are to supplying or publishing a video recording in any manner, including, in relation to a video recording in the form of data stored electronically, by means of transmitting such data: s 8(8) (a).

16 Animal Welfare Act 2006 s 8(3)(a) (not in force: see note 14).

17 Animal Welfare Act 2006 s 8(3)(b) (not in force: see note 14). As to the meaning of 'publish' see note 15.

18 For these purposes, references to showing a video recording are to showing a moving image reproduced from a video recording by any means: Animal Welfare Act 2006 s 8(8)(b).

19 Animal Welfare Act 2006 s 8(3)(c) (not in force: see note 14).

20 Animal Welfare Act 2006 s 8(3)(d) (not in force: see note 14).

21 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706 preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a).

22 Animal Welfare Act 2006 s 8(4) (to be brought into force as from a day to be appointed under s 68(3); at the date at which this volume states the law, no such day had been appointed). 'Commencement date' means the date on which s 8(3) comes into force: s 8(7). See note 14.

23 'Programme service' has the same meaning as in the Communications Act 2003 (see **TELECOMMUNICATIONS** vol 97 (2010) PARA 16): Animal Welfare Act 2006 s 8(7).

24 Animal Welfare Act 2006 s 8(5) (to be brought into force as from a day to be appointed under s 68(3); at the date at which this volume states the law, no such day had been appointed).

UPDATE

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

830 Animal fights

NOTE 14--Animal Welfare Act 2006 s 8(6) repealed: Coroners and Justice Act 2009 Sch 21 para 96, Sch 23 Pt 5. See Coroners and Justice Act 2009 s 143 (implementation of E-Commerce and Services directives: penalties).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/(iii) Promotion of Welfare/831. Duty to ensure welfare of animal.

(iii) Promotion of Welfare

831. Duty to ensure welfare of animal.

A person commits an offence if he does not take such steps as are reasonable in all the circumstances to ensure that the needs of an animal¹ for which he is responsible² are met to the extent required by good practice³. For the purposes of the Animal Welfare Act 2006, an animal's needs are taken to include (1) its need for a suitable environment; (2) its need for a suitable diet; (3) its need to be able to exhibit normal behaviour patterns; (4) any need it has to be housed with, or apart from, other animals; and (5) its need to be protected from pain, suffering⁴, injury and disease⁵. These provisions do not apply to the destruction of an animal in an appropriate and humane manner⁶.

If an inspector⁷ is of the opinion that a person is failing to ensure that the needs of an animal for which he is responsible are met, he may serve on the person a notice which (a) states that he is of that opinion; (b) specifies the respects in which he considers the person is failing to comply with that duty; (c) specifies the steps he considers need to be taken in order to comply with the duty; (d) specifies a period for the taking of those steps; and (e) explains the effect of the notice⁸. Where such a notice (an 'improvement notice') is served, no proceedings for an offence of failing to ensure that the animal's needs are met may be instituted before the end of the period specified for the purposes of head (d) (the 'compliance period') in respect of the non-compliance which gave rise to the notice or any continuation of that non-compliance⁹. If the steps specified in an improvement notice are taken at any time before the end of the compliance period, no proceedings for an offence may be instituted in respect of the non-compliance which gave rise to the notice or any continuation of that non-compliance prior to the taking of the steps specified in the notice¹⁰. An inspector may extend, or further extend, the compliance period specified in an improvement notice¹¹.

1 As to the meaning of 'animal' see PARAS 817 note 23, 821 note 1.

2 As to the meaning of 'person responsible for an animal' see PARA 821.

3 Animal Welfare Act 2006 s 9(1). The circumstances to which it is relevant to have regard when applying s 9(1) include, in particular (1) any lawful purpose for which the animal is kept; and (2) any lawful activity undertaken in relation to the animal: s 9(3).

A person guilty of an offence under s 9 is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 5 on the standard scale, or to both: s 32(2). As to the standard scale see PARA 738 note 1. In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). At the date at which this volume states the law, no such day had been appointed. As to other penalties of deprivation and disqualification see PARA 851 et seq.

4 As to the meaning of 'suffering' see PARA 821 note 1.

5 Animal Welfare Act 2006 s 9(2).

6 Animal Welfare Act 2006 s 9(4).

7 As to the appointment of inspectors see PARA 823.

8 Animal Welfare Act 2006 s 10(1).

- 9 Animal Welfare Act 2006 s 10(2).
- 10 Animal Welfare Act 2006 s 10(3).
- 11 Animal Welfare Act 2006 s 10(4).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/(iii) Promotion of Welfare/832. Prohibition on transfer of animals by way of sale or prize to persons under 16.

832. Prohibition on transfer of animals by way of sale or prize to persons under 16.

A person commits an offence if he sells an animal¹ to a person whom he has reasonable cause to believe to be under the age of 16 years².

A person commits an offence if he enters into an arrangement with a person whom he has reasonable cause to believe to be under the age of 16 years and the arrangement is one under which that person has the chance to win an animal as a prize³. A person does not commit this offence if (1) he enters into the arrangement in the presence of the person with whom the arrangement is made; and (2) he has reasonable cause to believe that the person with whom the arrangement is made is accompanied by a person who is not under the age of 16 years⁴. Nor does a person commit such an offence if (a) he enters into the arrangement otherwise than in the presence of the person with whom the arrangement is made; and (b) he has reasonable cause to believe that a person who has actual care and control of the person with whom the arrangement is made has consented to the arrangement⁵. A person does not commit such an offence if he enters into the arrangement in a family context⁶.

1 For these purposes, selling an animal includes transferring, or agreeing to transfer, ownership of the animal in consideration of entry by the transferee into another transaction: Animal Welfare Act 2006 s 11(2). As to the meaning of 'animal' see PARAS 817 note 23, 821 note 1.

2 Animal Welfare Act 2006 s 11(1). A person guilty of an offence under s 11 is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale, or to both: s 32(4). As to the standard scale see PARA 738 note 1. In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). At the date at which this volume states the law, no such day had been appointed. As to other penalties of deprivation and disqualification see PARA 851 et seq.

3 Animal Welfare Act 2006 s 11(3). As to the penalty see note 2.

4 Animal Welfare Act 2006 s 11(4).

5 Animal Welfare Act 2006 s 11(5).

6 Animal Welfare Act 2006 s 11(6).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/(iii) Promotion of Welfare/833. Regulations to promote welfare.

833. Regulations to promote welfare.

The appropriate national authority¹ may by regulations make such provision as the authority thinks fit for the purpose of promoting the welfare of animals² for which a person is responsible³, or the progeny of such animals⁴. Without prejudice to the generality of this power, such regulations may, in particular:

- 40 (1) make provision imposing specific requirements for the purpose of securing that the needs⁵ of animals are met;
- 41 (2) make provision to facilitate or improve co-ordination in relation to the carrying out by different persons of functions relating to the welfare of animals;
- 42 (3) make provision for the establishment of one or more bodies with functions relating to advice about the welfare of animals⁶.

Power to make such regulations includes power:

- 43 (a) to provide that breach of a provision of the regulations is an offence⁷;
- 44 (b) to apply a relevant post-conviction power⁸ in relation to conviction for an offence under the regulations;
- 45 (c) to make provision for fees or other charges in relation to the carrying out of functions under the regulations;
- 46 (d) to make different provision for different cases or areas;
- 47 (e) to provide for exemptions from a provision of the regulations, either subject to specified⁹ conditions or without conditions;
- 48 (f) to make incidental, supplementary, consequential or transitional provision or savings¹⁰.

Before making regulations under this power, the appropriate national authority must consult such persons appearing to the authority to represent any interests concerned as the authority considers appropriate¹¹.

1 As to the meaning of 'appropriate national authority' see PARA 821 note 1.

2 As to the meaning of 'animal' see PARAS 817 note 23, 821 note 1.

3 As to the meaning of 'person responsible for an animal' see PARA 821.

4 Animal Welfare Act 2006 s 12(1). The power to make such regulations is exercisable by statutory instrument: s 61(1). As respects England, no such regulations may be made by the Secretary of State unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament: s 61(2). As to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Secretary of State see PARA 705; and as to the Welsh Ministers see PARA 706. In exercise of this power the Welfare of Farmed Animals (England) Regulations 2007, SI 2007/2078, and the Welfare of Farmed Animals (Wales) Regulations 2007, SI 2007/3070, have been made. As to those regulations see PARA 866.

5 References to the needs of an animal are to be read in accordance with the Animal Welfare Act 2006 s 9(2) (see PARA 831): s 62(5).

6 Animal Welfare Act 2006 s 12(2).

7 Power to make regulations under the Animal Welfare Act 2006 s 12(1) does not include power to create an offence triable on indictment or punishable with imprisonment for a term exceeding 51 weeks or a fine exceeding level 5 on the standard scale: s 12(4). In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). Such regulations may provide that a specified offence under the regulations is to be treated as a relevant offence for the purposes of s 23 (entry and search under warrant in connection with offences: see PARA 842): s 12(5). A person guilty of an offence under regulations under s 12 is liable on summary conviction to such penalty by way of imprisonment or fine as may be provided by such regulations: s 32(3).

8 In the Animal Welfare Act 2006, references to a 'relevant post-conviction power' are to a power conferred by (1) s 33, 34, 37 or 42 (see PARAS 851, 852, 854, 858); (2) the Performing Animals (Regulation) Act 1925 s 4(2) (power to remove name from register under that Act and disqualify from registration: see PARA 862); (3) the Pet Animals Act 1951 s 5(3) (power to cancel licence under that Act and disqualify from carrying on licensable activity: see PARA 862); (4) the Animal Boarding Establishments Act 1963 s 3(3) (provision corresponding to that mentioned in head (3): see PARA 862); (5) the Riding Establishments Act 1964 s 4(3) (further corresponding provision: see PARA 862); (6) the Guard Dogs Act 1975 s 3(4) (power to cancel licence under that Act: see PARA 917); (7) the Dangerous Wild Animals Act 1976 s 6(2) (power to cancel licence under that Act and disqualify from carrying on licensable activity: see PARA 862); or (8) the Zoo Licensing Act 1981 s 4(4) (power to refuse licence under that Act for conviction for an offence: see PARA 944): Animal Welfare Act 2006 s 62(6).

9 'Specified' means specified in regulations under the Animal Welfare Act 2006 s 12(1): s 12(7).

10 Animal Welfare Act 2006 s 12(3).

11 Animal Welfare Act 2006 s 12(6).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/(iii) Promotion of Welfare/834. Licensing or registration of activities involving animals.

834. Licensing or registration of activities involving animals.

No person may carry on an activity which (1) involves animals¹ for which a person is responsible²; and (2) is specified for these purposes by regulations made by the appropriate national authority³, except under the authority of a licence for such purposes⁴.

No person may carry on an activity which (a) involves animals for which a person is responsible; and (b) is specified for these purposes by regulations made by the appropriate national authority, unless registered for such purposes⁵.

A person commits an offence if he contravenes either of the above provisions⁶.

Regulations specifying activities may only be made for the purpose of promoting the welfare of animals for which a person is responsible, or the progeny of such animals⁷. The appropriate national authority may by regulations make provision about licences or registration for the above purposes⁸. Before making regulations, the appropriate national authority must consult such persons appearing to the authority to represent any interests concerned as the authority considers appropriate⁹.

1 As to the meaning of 'animal' see PARAS 817 note 23, 821 note 1.

2 As to the meaning of 'person responsible for an animal' see PARA 821.

3 As to the meaning of 'appropriate national authority' see PARA 821 note 1.

4 Animal Welfare Act 2006 s 13(1), (2).

5 Animal Welfare Act 2006 s 13(3), (4).

6 Animal Welfare Act 2006 s 13(6). A person guilty of an offence under s 13(6) is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 5 on the standard scale, or to both: s 32(2). As to the standard scale see PARA 738 note 1. In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). At the date at which this volume states the law, no such day had been appointed. As to other penalties of deprivation and disqualification see PARA 851 et seq.

7 Animal Welfare Act 2006 s 13(5).

8 Animal Welfare Act 2006 s 13(7). The appropriate national authority may by regulations repeal any of the following enactments (which impose licence or registration requirements in relation to activities involving animals): (1) the Performing Animals (Regulation) Act 1925 s 1(1) (see PARA 873); (2) the Pet Animals Act 1951 s 1(1) (see PARA 936); (3) the Animal Boarding Establishments Act 1963 s 1(1) (see PARA 938); (4) the Riding Establishments Act 1964 s 1(1) (see PARA 940); (5) the Breeding of Dogs Act 1973 s 1(1) (see PARA 932); Animal Welfare Act 2006 s 13(8). The power to make regulations under s 13 is exercisable by statutory instrument: s 61(1). As respects England, no such regulations may be made by the Secretary of State unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament: s 61(2). As to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Secretary of State see PARA 705; and as to the Welsh Ministers see PARA 706. A person guilty of an offence under regulations under the Animal Welfare Act 2006 s 13 is liable on summary conviction to such penalty by way of imprisonment or fine as may be provided by such regulations: s 32(3). As to regulations under s 13 see further Sch 1; and PARAS 835-836.

Power to make regulations under s 13(7) includes power (a) to make provision for purposes other than the purpose of promoting the welfare of animals for which a person is responsible; (b) to make different provision

for different cases or areas; (c) to provide for exemptions from a provision of the regulations, either subject to specified conditions or without conditions: s 13(10), Sch 1 para 18.

Power to make regulations under s 13 includes power to make incidental, supplementary, consequential or transitional provision or savings: Sch 1 para 19(1). In the case of provision consequential on the repeal of an enactment specified in s 13(8), the power under Sch 1 para 19(1) includes power (i) to amend or repeal an enactment; (ii) to make provision for the purpose of continuing the effect of an enactment repealed under head (i): Sch 1 para 19(2). The power under Sch 1 para 19(2)(b) includes power to provide that breach of a provision of the regulations is an offence, but does not include power to create an offence triable on indictment or punishable with imprisonment for a term exceeding 51 weeks (see note 6) or a fine exceeding level 5 on the standard scale: Sch 1 para 19(3).

9 Animal Welfare Act 2006 s 13(9).

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/(iii) Promotion of Welfare/835. Regulations as to licensing of activities involving animals.

835. Regulations as to licensing of activities involving animals.

Regulations¹ about licences required for activities involving animals² for which a person is responsible³ must provide for the licensing authority to be either a local authority⁴ or the appropriate national authority⁵. Where the licensing authority is a local authority, regulations may require the licensing authority to have regard in carrying out its functions under the regulations to such guidance as may be issued by the appropriate national authority⁶.

Regulations may, in particular (1) make provision about the period for which licences are to be granted; (2) make provision, in connection with the death of the holder of a licence, for the continuation in force of the licence for such period and subject to such conditions as the regulations may provide⁷. Regulations may not provide for licences to be granted for a period of more than three years⁸.

Regulations may, in particular (a) require a licensing authority not to grant a licence unless satisfied as to a matter specified in the regulations; (b) require a licensing authority to have regard, in deciding whether to grant a licence, to a matter specified in the regulations⁹. Regulations must make provision requiring a licensing authority not to grant a licence authorising the carrying on of an activity on specific premises¹⁰ unless the premises have been inspected as the regulations may provide¹¹. Regulations may, in particular, make provision for the grant of a licence subject to conditions¹².

Regulations may provide for breach of a condition of a licence to be an offence¹³ and may apply a relevant post-conviction power¹⁴ in relation to conviction for an offence of breach of condition of a licence¹⁵.

Regulations may make provision for appeals in relation to decisions of a licensing authority under the regulations¹⁶. They may include provision for fees or other charges in relation to the carrying out of functions of the licensing authority under the regulations¹⁷.

1 le regulations under the Animal Welfare Act 2006 s 13(7) for the purposes of s 13: see PARA 834. At the date at which this volume states the law no such regulations had been made.

2 As to the meaning of 'animal' see PARAS 817 note 23, 821 note 1.

3 As to the meaning of 'person responsible for an animal' see PARA 821.

4 As to the meaning of 'local authority' see PARA 823 note 2.

5 Animal Welfare Act 2006 s 13(10), Sch 1 paras 1, 2. As to the meaning of 'appropriate national authority' see PARA 821 note 1.

6 Animal Welfare Act 2006 Sch 1 para 3.

7 Animal Welfare Act 2006 Sch 1 para 4.

8 Animal Welfare Act 2006 Sch 1 para 5.

9 Animal Welfare Act 2006 Sch 1 para 6.

10 As to the meaning of 'premises' see PARA 825 note 5.

11 Animal Welfare Act 2006 Sch 1 para 7.

12 Animal Welfare Act 2006 Sch 1 para 8(1). Such provision may (1) enable a licensing authority to attach conditions to a licence; (2) require a licensing authority to attach to a licence conditions specified in the regulations: Sch 1 para 8(2).

13 Animal Welfare Act 2006 Sch 1 para 9(1). They may not provide for an offence of breach of condition of a licence to be triable on indictment or punishable with imprisonment for a term exceeding 51 weeks or a fine exceeding level 5 on the standard scale: Sch 1 para 9(2). In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). As to the standard scale see PARA 738 note 1. Regulations may provide that an offence of breach of condition of a licence is to be treated as a relevant offence for the purposes of s 23 (entry and search under warrant in connection with offences: see PARA 842): Sch 1 para 9(3).

14 As to the meaning of 'relevant post-conviction power' see PARA 833 note 8.

15 Animal Welfare Act 2006 Sch 1 para 9(4).

16 Animal Welfare Act 2006 Sch 1 para 10.

17 Animal Welfare Act 2006 Sch 1 para 11.

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/(iii) Promotion of Welfare/836. Regulations as to registration of activities involving animals.

836. Regulations as to registration of activities involving animals.

Regulations¹ about registration required for activities involving animals² for which a person is responsible³ must provide for the registering authority to be either a local authority⁴ or the appropriate national authority⁵. Where the registering authority is a local authority, regulations may require the registering authority to have regard in carrying out its functions under the regulations to such guidance as may be issued by the appropriate national authority⁶.

Regulations may, in particular (1) require a registering authority not to register an applicant for registration unless satisfied as to a matter specified in the regulations; (2) require a registering authority to have regard, in deciding whether to register an applicant for registration, to a matter specified in the regulations⁷. Regulations may make provision for appeals in relation to decisions of a registering authority under the regulations⁸. They may include provision for fees or other charges in relation to the carrying out of functions of the registering authority under the regulations⁹.

1 The regulations under the Animal Welfare Act 2006 s 13(7) for the purposes of s 13: see PARA 834. At the date at which this volume states the law no such regulations had been made.

2 As to the meaning of 'animal' see PARAS 817 note 23, 821 note 1.

3 As to the meaning of 'person responsible for an animal' see PARA 821.

4 As to the meaning of 'local authority' see PARA 823 note 2.

5 Animal Welfare Act 2006 s 13(10), Sch 1 paras 12, 13. As to the meaning of 'appropriate national authority' see PARA 821 note 1.

6 Animal Welfare Act 2006 Sch 1 para 14.

7 Animal Welfare Act 2006 Sch 1 para 15.

8 Animal Welfare Act 2006 Sch 1 para 16.

9 Animal Welfare Act 2006 Sch 1 para 17.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (iv) Animals in Distress/837. Powers in relation to animals in distress.

(iv) Animals in Distress

837. Powers in relation to animals in distress.

If an inspector¹ or a constable² reasonably believes that a protected animal³ is suffering⁴, he may take, or arrange for the taking of, such steps as appear to him to be immediately necessary to alleviate the animal's suffering⁵. This does not, however, authorise destruction of an animal⁶.

If a veterinary surgeon⁷ certifies that the condition of a protected animal is such that it should in its own interests be destroyed, an inspector or a constable may destroy the animal where it is or take it to another place and destroy it there, or arrange for the doing of any of such things⁸. An inspector or a constable may act without the certificate of a veterinary surgeon if it appears to him that the condition of the animal is such that there is no reasonable alternative to destroying it and that the need for action is such that it is not reasonably practicable to wait for a veterinary surgeon⁹.

An inspector or a constable may take a protected animal into possession if a veterinary surgeon certifies that it is suffering or that it is likely to suffer if its circumstances do not change¹⁰. An inspector or a constable may take such action without the certificate of a veterinary surgeon if it appears to him that the animal is suffering or that it is likely to do so if its circumstances do not change and that the need for action is such that it is not reasonably practicable to wait for a veterinary surgeon¹¹. Where an animal is taken into possession, an inspector or a constable may (1) remove it, or arrange for it to be removed, to a place of safety; (2) care for it, or arrange for it to be cared for either on the premises¹² where it was being kept when it was taken into possession or at such other place as he thinks fit; (3) mark it, or arrange for it to be marked, for identification purposes¹³.

A veterinary surgeon may examine and take samples from an animal for the purpose of determining whether to issue a certificate¹⁴ with respect to the animal¹⁵.

If a person exercises a power under these provisions otherwise than with the knowledge of a person who is responsible for the animal¹⁶ concerned, he must, as soon as reasonably practicable after exercising the power, take such steps as are reasonable in the circumstances to bring the exercise of the power to the notice of such a person¹⁷.

A person commits an offence if he intentionally obstructs a person in the exercise of power conferred by these provisions¹⁸.

A magistrates' court may, on application by a person who incurs expenses in acting under these provisions, order that he be reimbursed by such person as it thinks fit¹⁹. A person affected by such a decision may appeal against the decision to the Crown Court²⁰.

1 As to the appointment of inspectors see PARA 823.

2 As to the office of constable see generally **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

3 As to the meaning of 'protected animal' see PARA 817 note 23.

4 As to the meaning of 'suffering' see PARA 821 note 1.

5 Animal Welfare Act 2006 s 18(1). As to the power of entry for the purposes of s 18 see PARA 838.

- 6 Animal Welfare Act 2006 s 18(2).
- 7 As to the meaning of 'veterinary surgeon' see PARA 828 note 4.
- 8 Animal Welfare Act 2006 s 18(3).
- 9 Animal Welfare Act 2006 s 18(4).
- 10 Animal Welfare Act 2006 s 18(5). The power conferred by s 18(5) includes power to take into possession dependent offspring of an animal taken into possession under that subsection: s 18(7).
- 11 Animal Welfare Act 2006 s 18(6).
- 12 As to the meaning of 'premises' see PARA 825 note 5.
- 13 Animal Welfare Act 2006 s 18(8). A person caring for, or arranging for the care of, an animal on the premises where it was found may make use of any equipment on the premises: s 18(9).
- 14 le under the Animal Welfare Act 2006 s 18(3) or (5): see the text to notes 8, 10.
- 15 Animal Welfare Act 2006 s 18(10).
- 16 As to the meaning of 'person responsible for an animal' see PARA 821.
- 17 Animal Welfare Act 2006 s 18(11).
- 18 Animal Welfare Act 2006 s 18(12). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale, or to both: s 32(4). As to the standard scale see PARA 738 note 1. In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). At the date at which this volume states the law, no such day had been appointed. As to other penalties of deprivation and disqualification see PARA 851 et seq.
- 19 Animal Welfare Act 2006 s 18(13).
- 20 Animal Welfare Act 2006 s 18(14).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (iv) Animals in Distress/838. Power of entry.

838. Power of entry.

An inspector¹ or a constable² may enter premises³ for the purpose of searching for a protected animal⁴ and of exercising any power to alleviate suffering⁵ in relation to it if he reasonably believes that there is a protected animal on the premises and that the animal is suffering or, if the circumstances of the animal do not change, it is likely to suffer⁶. This does not, however, authorise entry to any part of premises which is used as a private dwelling⁷.

An inspector or a constable may (if necessary) use reasonable force in exercising the power to enter premises, but only if it appears to him that entry is required before a warrant⁸ can be obtained and executed⁹.

A justice of the peace may, on the application of an inspector or constable, issue a warrant authorising an inspector or a constable to enter premises for the purpose mentioned above, if necessary using reasonable force¹⁰. The power to issue such a warrant is exercisable only if the justice of the peace is satisfied (1) that there are reasonable grounds for believing that there is a protected animal on the premises and that the animal is suffering or is likely to suffer if its circumstances do not change; and (2) that the conditions for the grant of a warrant¹¹ are satisfied in relation to the premises¹².

1 As to the appointment of inspectors see PARA 823.

2 As to the office of constable see generally **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

3 As to the meaning of 'premises' see PARA 825 note 5.

4 As to the meaning of 'protected animal' see PARA 817 note 23.

5 As to any power under the Animal Welfare Act 2006 s 18: see PARA 837. As to the meaning of 'suffering' see PARA 821 note 1.

6 Animal Welfare Act 2006 s 19(1). A person may only exercise a power of entry under s 19(1) if on request (1) he produces evidence of his identity and of his entitlement to exercise the power; (2) he outlines the purpose for which the power is exercised: s 53, Sch 2 para 4. In exercising such a power, a person may take with him onto the premises such persons as he thinks appropriate: Sch 2 para 5. Entry under such a power must be at a reasonable time, unless it appears to the person exercising the power that the purpose for which he is exercising the power would be frustrated on entry at a reasonable time: Sch 2 para 6. Where a person enters premises in the exercise of such a power of entry (or of a power of entry conferred by a warrant under s 19(4): see text and note 10), he may require any qualifying person on the premises to give him such assistance as he may reasonably require for the purpose for which entry is made: Sch 2 para 7(1), (2). The reference to a qualifying person is to (a) the occupier of the premises; (b) any person who appears to the person exercising the power to be responsible for animals on the premises; (c) any person who appears to the person exercising the power to be under the direction or control of a person mentioned in head (a) or (b): Sch 2 para 7(3). In exercising such a power, a person may take with him such equipment and materials as he thinks appropriate: Sch 2 para 8. If, in the exercise of such a power of entry, a person enters premises which are unoccupied, he must leave them as effectively secured against entry as he found them: Sch 2 para 9.

Where a person enters premises in exercise of a power of entry conferred by s 19(1), or by a warrant under s 19(4) (see text and note 10), he may (i) inspect an animal found on the premises; (ii) remove a carcass found on the premises for the purposes of carrying out a post-mortem examination on it; (iii) remove for those purposes the carcass of an animal destroyed on the premises in exercise of power conferred by s 18(3) or (4) (see PARA 837); (iv) take a photograph of anything on the premises: Sch 2 para 15(1). Where a person exercising a power of entry under s 19(1) takes another person with him under Sch 2 PARA 5, the other person may exercise any power conferred by Sch 2 para 15(1) if he is in the company, and under the supervision, of the person exercising the power of entry: Sch 2 para 15(2).

A person commits an offence if he (A) intentionally obstructs a person in the lawful exercise of a power to which Sch 2 para 7 or 10 applies; (B) intentionally obstructs a person in the lawful exercise of a power conferred by Sch 2; (C) fails without reasonable excuse to give any assistance which he is required to give under Sch 2 para 7: Sch 2 para 16. A person guilty of any such offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale, or to both: s 32(4). As to the standard scale see PARA 738 note 1. In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). At the date at which this volume states the law, no such day had been appointed. As to other penalties of deprivation and disqualification see PARA 851 et seq.

7 Animal Welfare Act 2006 s 19(2). In the Animal Welfare Act 2006, references to a part of premises which is used as a private dwelling include any yard, garden, garage or outhouse which is used for purposes in connection with it: s 62(3).

8 le under the Animal Welfare Act 2006 s 19(4).

9 Animal Welfare Act 2006 s 19(3).

10 Animal Welfare Act 2006 s 19(4). The Police and Criminal Evidence Act 1984 ss 15, 16 have effect in relation to the issue of a warrant under the Animal Welfare Act 2006 s 19(4) to an inspector as they have effect in relation to the issue of a warrant under that provision to a constable: Sch 2 para 1(1). Those provisions apply with certain modifications in relation to a warrant under s 19(4): see Sch 2 para 1(2)-(4). The provisions of Sch 2 paras 7-9 (see note 6) apply in relation to a power of entry conferred by such a warrant. As to offences in relation to those provisions see note 6.

11 le the conditions in the Animal Welfare Act 2006 s 52: see PARA 842.

12 Animal Welfare Act 2006 s 19(5).

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Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (iv) Animals in Distress/839. Orders in relation to animals taken into possession.

839. Orders in relation to animals taken into possession.

A magistrates' court may order any of the following in relation to an animal¹ taken into possession²:

- 49 (1) that specified treatment be administered to the animal;
- 50 (2) that possession of the animal be given up to a specified person;
- 51 (3) that the animal be sold³;
- 52 (4) that the animal be disposed of otherwise than by way of sale;
- 53 (5) that the animal be destroyed⁴.

If an animal is taken into possession when it is pregnant, the power conferred on the court is also exercisable in relation to any offspring that results from the pregnancy⁵. The power is exercisable on application by the owner of the animal or any other person appearing to the court to have a sufficient interest in the animal⁶. A court may not make an order under these provisions unless (a) it has given the owner of the animal an opportunity to be heard; or (b) it is satisfied that it is not reasonably practicable to communicate with the owner⁷.

Where a court makes an order, it may (i) appoint a person to carry out, or arrange for the carrying out, of the order; (ii) give directions with respect to the carrying out of the order; (iii) confer additional powers (including power to enter premises⁸ where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order; (iv) order a person to reimburse the expenses of carrying out the order⁹.

In determining how to exercise its powers, the court must have regard, amongst other things, to the desirability of protecting the animal's value and avoiding increasing any expenses which a person may be ordered to reimburse¹⁰.

A person commits an offence if he intentionally obstructs a person in the exercise of any power conferred by virtue of these provisions¹¹.

1 As to the meaning of 'animal' see PARAS 817 note 23, 821 note 1.

2 Ie under the Animal Welfare Act 2006 s 18(5); see PARA 837.

3 If the owner of the animal is subject to a liability by virtue of the Animal Welfare Act 2006 s 18(13) (see PARA 837) or s 20(5)(d) (see head (iv) in the text), any amount to which he is entitled as a result of sale of the animal may be reduced by an amount equal to that liability: s 20(8).

4 Animal Welfare Act 2006 s 20(1).

5 Animal Welfare Act 2006 s 20(2).

6 Animal Welfare Act 2006 s 20(3).

7 Animal Welfare Act 2006 s 20(4).

8 As to the meaning of 'premises' see PARA 825 note 5.

9 Animal Welfare Act 2006 s 20(5).

10 Animal Welfare Act 2006 s 20(6).

11 Animal Welfare Act 2006 s 20(7). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale, or to both: s 32(4). As to the standard scale see PARA 738 note 1. In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). At the date at which this volume states the law, no such day had been appointed. As to other penalties of deprivation and disqualification see PARA 851 et seq.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (iv) Animals in Distress/840. Appeals against orders in relation to animals taken into possession.

840. Appeals against orders in relation to animals taken into possession.

Where a court makes an order¹ in relation to an animal² taken into possession³, the owner of the animal to which the order relates may appeal against the order to the Crown Court⁴. Nothing may be done under such an order unless (1) the period for giving notice of appeal against the order has expired; and (2) if the order is the subject of an appeal, the appeal has been determined or withdrawn⁵.

Where the effect of an order is suspended under the above provision, (a) no directions given in connection with the order are to have effect; but (b) the court may give directions about how any animal to which the order applies is to be dealt with during the suspension⁶. Such directions may, in particular (i) appoint a person to carry out, or arrange for the carrying out, of the directions; (ii) require any person who has possession of the animal to deliver it up for the purposes of the directions; (iii) confer additional powers (including power to enter premises⁷ where the animal is being kept) for the purpose of, or in connection with, the carrying out of the directions; (iv) provide for the recovery of any expenses which are reasonably incurred in carrying out the directions⁸.

Where a court decides on an application by the owner of an animal⁹ not to exercise the power to make an order¹⁰ in relation to the animal, the applicant may appeal against the decision to the Crown Court¹¹. Where a court makes an order for a person to reimburse the expenses of carrying out the order¹², the person against whom the order is made may appeal against the order to the Crown Court¹³.

1 Ie under the Animal Welfare Act 2006 s 20(1): see PARA 839.

2 As to the meaning of 'animal' see PARAS 817 note 23, 821 note 1.

3 Ie under the Animal Welfare Act 2006 s 18(5): see PARA 837.

4 Animal Welfare Act 2006 s 21(1).

5 Animal Welfare Act 2006 s 21(2).

6 Animal Welfare Act 2006 s 21(3).

7 As to the meaning of 'premises' see PARA 825 note 5.

8 Animal Welfare Act 2006 s 21(4).

9 Ie under the Animal Welfare Act 2006 s 20(3)(a): see PARA 839.

10 Ie under the Animal Welfare Act 2006 s 20(1): see PARA 839.

11 Animal Welfare Act 2006 s 21(5).

12 Ie under the Animal Welfare Act 2006 s 20(5)(d): see PARA 839.

13 Animal Welfare Act 2006 s 21(6).

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Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (v) Enforcement Powers/841. Seizure of animals involved in fighting offences.

(v) Enforcement Powers

841. Seizure of animals involved in fighting offences.

A constable¹ may seize an animal² if it appears to him that it is one in relation to which an offence as to animal fighting³ has been committed⁴. A constable may enter and search premises⁵ for the purpose of exercising this power if he reasonably believes that there is an animal on the premises and that the animal is one in relation to which the power is exercisable⁶. This does not, however, authorise entry to any part of premises which is used as a private dwelling⁷.

A justice of the peace may, on the application of a constable, issue a warrant authorising a constable to enter and search premises, if necessary using reasonable force, for the purpose of exercising the power to seize an animal⁸. The power to issue a warrant is exercisable only if the justice of the peace is satisfied that there are reasonable grounds for believing that there is on the premises an animal in relation to which an offence as to animal fighting has been committed and that the conditions for the grant of a warrant⁹ are satisfied in relation to the premises¹⁰.

1 As to the office of constable see generally **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

2 As to the meaning of 'animal' see PARAS 817 note 23, 821 note 1.

3 Ie an offence under the Animal Welfare Act 2006 s 8(1) or (2): see PARA 830.

4 Animal Welfare Act 2006 s 22(1). In s 22, references to an animal in relation to which an offence under s 8(1) or (2) has been committed include an animal which took part in an animal fight in relation to which such an offence was committed: s 22(6).

5 As to the meaning of 'premises' see PARA 825 note 5.

6 Animal Welfare Act 2006 s 22(2). A person may only exercise a power of entry under s 22(2) if on request (1) he produces evidence of his identity and of his entitlement to exercise the power; (2) he outlines the purpose for which the power is exercised: s 53, Sch 2 para 4. In exercising such a power, a person may take with him onto the premises such persons as he thinks appropriate: Sch 2 para 5. Entry under such a power must be at a reasonable time, unless it appears to the person exercising the power that the purpose for which he is exercising the power would be frustrated on entry at a reasonable time: Sch 2 para 6. Where a person enters premises in the exercise of such a power of entry (or of a power of entry conferred by a warrant under s 22(4): see text and note 8), he may require any qualifying person on the premises to give him such assistance as he may reasonably require for the purpose for which entry is made: Sch 2 para 7(1), (2). The reference to a qualifying person is to (a) the occupier of the premises; (b) any person who appears to the person exercising the power to be responsible for animals on the premises; (c) any person who appears to the person exercising the power to be under the direction or control of a person mentioned in head (a) or (b): Sch 2 para 7(3). In exercising such a power, a person may take with him such equipment and materials as he thinks appropriate: Sch 2 para 8. If, in the exercise of such a power of entry, a person enters premises which are unoccupied, he must leave them as effectively secured against entry as he found them: Sch 2 para 9. A person commits an offence if he (i) intentionally obstructs a person in the lawful exercise of a power to which Sch 2 para 7 applies; (ii) intentionally obstructs a person in the lawful exercise of a power conferred by Sch 2; or (iii) fails without reasonable excuse to give any assistance which he is required to give under Sch 2 para 7: Sch 2 para 16. A person guilty of any such offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale, or to both: s 32(4). As to the standard scale see PARA 738 note 1. In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). At the date at which this volume states the law, no such day had been appointed. As to other penalties of deprivation and disqualification see PARA 851 et seq.

7 Animal Welfare Act 2006 s 22(3). As to references to a part of premises used as a private dwelling see PARA 838 note 7.

8 Animal Welfare Act 2006 s 22(4). The provisions of Sch 2 paras 7-9 (see note 6) apply in relation to a power of entry conferred by such a warrant. As to offences in connection with those provisions see note 6.

9 Ie the conditions in the Animal Welfare Act 2006 s 52: see PARA 842.

10 Animal Welfare Act 2006 s 22(5).

UPDATE

817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (v) Enforcement Powers/842. Entry, search under warrant and power of arrest.

842. Entry, search under warrant and power of arrest.

A justice of the peace may, on the application of an inspector¹ or constable², issue a warrant authorising an inspector or a constable to enter premises³, if necessary using reasonable force, in order to search for evidence of the commission of a relevant offence⁴. The power to issue a warrant is exercisable only if the justice of the peace is satisfied (1) that there are reasonable grounds for believing that a relevant offence has been committed on the premises or that evidence of the commission of a relevant offence is to be found on the premises; and (2) that the conditions for the grant of a warrant⁵ are satisfied in relation to the premises⁶.

The conditions for the grant of a warrant are satisfied in relation to premises if any of the following four conditions is met⁷:

- 54 (1) that the whole of the premises is used as a private dwelling and the occupier has been informed of the decision to apply for a warrant⁸;
- 55 (2) that any part of the premises is not used as a private dwelling⁹ and that each of the following applies to the occupier of the premises: (a) he has been informed of the decision to seek entry to the premises and of the reasons for that decision; (b) he has failed to allow entry to the premises on being requested to do so by an inspector or a constable; (c) he has been informed of the decision to apply for a warrant¹⁰;
- 56 (3) that (a) the premises are unoccupied or the occupier is absent; and (b) notice of intention to apply for a warrant has been left in a conspicuous place on the premises¹¹; or
- 57 (4) that it is inappropriate to inform the occupier of the decision to apply for a warrant because (a) it would defeat the object of entering the premises; or (b) entry is required as a matter of urgency¹².

A constable may enter and search any premises for the purpose of arresting a person for an offence under the Animal Welfare Act 2006¹³ relating to the prevention of harm to animals¹⁴.

1 As to the appointment of inspectors see PARA 823.

2 As to the office of constable see generally **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

3 As to the meaning of 'premises' see PARA 825 note 5.

4 Animal Welfare Act 2006 s 23(1). 'Relevant offence' means an offence under any of ss 4-9, 13(6) and 34(9) (see PARAS 826-831, 834, 852): s 23(3). The Police and Criminal Evidence Act 1984 ss 15, 16 have effect in relation to the issue of a warrant under the Animal Welfare Act 2006 s 23(1) to an inspector as they have effect in relation to the issue of a warrant under that provision to a constable: s 53, Sch 2 para 1(1). Those provisions apply with certain modifications in relation to a warrant under s 19(4): see Sch 2 para 1(2)-(4). Where a person enters premises in the exercise of a power of entry under such a warrant, he may require any qualifying person on the premises to give him such assistance as he may reasonably require for the purpose for which entry is made: Sch 2 para 7(1), (2). The reference to a qualifying person is to (1) the occupier of the premises; (2) any person who appears to the person exercising the power to be responsible for animals on the premises; or (3) any person who appears to the person exercising the power to be under the direction or control of a person mentioned in head (1) or (2): Sch 2 para 7(3). In exercising such a power, a person may take with him such equipment and materials as he thinks appropriate: Sch 2 para 8. If, in the exercise of such a power of entry, a person enters premises which are unoccupied, he must leave them as effectively secured against entry as he

found them: Sch 2 para 9. Specific powers and functions are conferred on an inspector exercising such a power of search: see Sch 2 paras 10-14.

A person commits an offence if he (a) intentionally obstructs a person in the lawful exercise of a power to which Sch 2 para 7 or 10 applies; (b) intentionally obstructs a person in the lawful exercise of a power conferred by Sch 2; or (c) fails without reasonable excuse to give any assistance which he is required to give under Sch 2 para 7: Sch 2 para 16. A person guilty of any such offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale, or to both: s 32(4). As to the standard scale see PARA 738 note 1. In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). At the date at which this volume states the law, no such day had been appointed. As to other penalties of deprivation and disqualification see PARA 851 et seq.

5 le the conditions in the Animal Welfare Act 2006 s 52.

6 Animal Welfare Act 2006 s 23(2).

7 Animal Welfare Act 2006 s 52(1).

8 Animal Welfare Act 2006 s 52(2).

9 As to references to a part of premises used as a private dwelling see PARA 838 note 7.

10 Animal Welfare Act 2006 s 52(3).

11 Animal Welfare Act 2006 s 52(4).

12 Animal Welfare Act 2006 s 52(5).

13 le under any of the Animal Welfare Act 2006 ss 4, 5, 6(1), (2), 7 and 8(1), (2) (see PARAS 826-830).

14 Police and Criminal Evidence Act 1984 s 17(1)(c) (amended by the Animal Welfare Act 2006 s 24). See further **POLICE**.

UPDATE

817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (v) Enforcement Powers/843. Inspection of records.

843. Inspection of records.

An inspector¹ may require the holder of a licence² to produce for inspection any records which he is required to keep by a condition of the licence³. Where records which a person is so required to keep are stored in electronic form, this power includes power to require the records to be made available for inspection in a visible and legible form or in a form from which they can readily be produced in a visible and legible form⁴. An inspector may inspect and take copies of any records produced for inspection in pursuance of a requirement under these provisions⁵.

1 As to the appointment of inspectors see PARA 823.

2 'Licence' means a licence for the purposes of the Animal Welfare Act 2006 s 13 (see PARAS 834-835): s 62(1).

3 Animal Welfare Act 2006 s 25(1).

4 Animal Welfare Act 2006 s 25(2).

5 Animal Welfare Act 2006 s 25(3).

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (v) Enforcement Powers/844. Inspection to check compliance.

844. Inspection to check compliance.

An inspector¹ may carry out an inspection in order to check compliance with (1) the conditions subject to which a licence² is granted³; or (2) provision made by or under the Animal Welfare Act 2006 which is relevant to the carrying on of an activity to which a licence relates⁴. An inspector may, for the purpose of carrying out such an inspection, enter (a) premises⁵ specified in a licence as premises on which the carrying on of an activity is authorised; or (b) premises on which he reasonably believes an activity to which a licence relates is being carried on⁶. This does not, however, authorise entry to any part of premises which is used as a private dwelling⁷ unless 24 hours' notice of the intended entry is given to the occupier⁸.

An inspector may carry out an inspection in order to check compliance with provision made by or under the Animal Welfare Act 2006 which is relevant to the carrying on of an activity to which a registration⁹ relates¹⁰. An inspector may, for the purpose of carrying out such an inspection, enter premises on which he reasonably believes a person registered is carrying on an activity to which the registration relates¹¹. This does not, however, authorise entry to any part of premises which is used as a private dwelling unless 24 hours' notice of the intended entry is given to the occupier¹².

An inspector may carry out an inspection in order to check compliance with regulations to promote the welfare of animals¹³ which implement a Community obligation¹⁴. An inspector may enter any premises in order to carry out such an inspection¹⁵, but this does not authorise entry to any part of premises which is used as a private dwelling¹⁶.

1 As to the appointment of inspectors see PARA 823.

2 As to the meaning of 'licence' see PARA 843 note 2.

3 As to the grant of a licence subject to conditions see PARA 835.

4 Animal Welfare Act 2006 s 26(1). Specific powers and functions are conferred on an inspector exercising such a power of inspection: see s 53, Sch 2 paras 10-14. A person commits an offence if (1) he intentionally obstructs a person in the lawful exercise of a power to which Sch 2 para 10 applies; or (2) intentionally obstructs a person in the lawful exercise of a power conferred by Sch 2: Sch 2 para 16. A person guilty of any such offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale, or to both: s 32(4). As to the standard scale see PARA 738 note 1. In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). At the date at which this volume states the law, no such day had been appointed. As to other penalties of deprivation and disqualification see PARA 851 et seq.

5 As to the meaning of 'premises' see PARA 825 note 5.

6 Animal Welfare Act 2006 s 26(2). A person may only exercise a power of entry under s 26(2) if on request (1) he produces evidence of his identity and of his entitlement to exercise the power; (2) he outlines the purpose for which the power is exercised: Sch 2 para 4. In exercising such a power, a person may take with him onto the premises such persons as he thinks appropriate: Sch 2 para 5. Entry under such a power must be at a reasonable time, unless it appears to the person exercising the power that the purpose for which he is exercising the power would be frustrated on entry at a reasonable time: Sch 2 para 6. Where a person enters premises in the exercise of such a power of entry, he may require any qualifying person on the premises to give him such assistance as he may reasonably require for the purpose for which entry is made: Sch 2 para 7(1), (2). The reference to a qualifying person is to (a) the occupier of the premises; (b) any person who appears to the person exercising the power to be responsible for animals on the premises; (c) any person who appears to the person exercising the power to be under the direction or control of a person mentioned in head (a) or (b) (Sch 2

para 7(3)); or (d) the holder of a licence (i) specifying the premises as premises on which the carrying on of an activity is authorised; or (ii) relating to an activity which is being carried on on the premises (Sch 2 para 7(4)). In exercising such a power, a person may take with him such equipment and materials as he thinks appropriate: Sch 2 para 8. If, in the exercise of such a power of entry, a person enters premises which are unoccupied, he must leave them as effectively secured against entry as he found them: Sch 2 para 9.

A person commits an offence if he (A) intentionally obstructs a person in the lawful exercise of a power to which Sch 2 para 7 applies; (B) intentionally obstructs a person in the lawful exercise of a power conferred by Sch 2; or (C) fails without reasonable excuse to give any assistance which he is required to give under Sch 2 para 7: Sch 2 para 16. As to the penalty see note 4.

7 As to references to a part of premises used as a private dwelling see PARA 838 note 7.

8 Animal Welfare Act 2006 s 26(3).

9 Ie for the purposes of the Animal Welfare Act 2006 s 13: see PARA 834.

10 Animal Welfare Act 2006 s 27(1). Specific powers and functions are conferred on an inspector exercising such a power of inspection: see Sch 2 paras 10-14. As to offences of obstruction see note 4.

11 Animal Welfare Act 2006 s 27(2). A person may only exercise a power of entry under s 27(2) or s 29(2) (see text and note 15) under the same conditions as apply to a power of entry under s 26(2): see note 6. The provisions of Sch 2 paras 7(1)-(3), 8, 9 (see note 6) apply in relation to the exercise of such a power. As to offences relating to those provisions see note 6.

12 Animal Welfare Act 2006 s 27(3).

13 Ie regulations under the Animal Welfare Act 2006 s 12: see PARA 833.

14 Animal Welfare Act 2006 s 29(1). Specific powers and functions are conferred on an inspector exercising such a power of inspection: see Sch 2 paras 10-14. As to offences of obstruction see note 4.

15 Animal Welfare Act 2006 s 29(2). The provisions of Sch 2 paras 7(1)-(3), 8, 9 (see note 6) apply in relation to the exercise of such a power. As to offences relating to those provisions see note 6.

16 Animal Welfare Act 2006 s 29(3).

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (v) Enforcement Powers/845. Inspection of farm premises.

845. Inspection of farm premises.

An inspector¹ may carry out an inspection in order to (1) check compliance with regulations to promote the welfare of animals² which relate to animals bred or kept for farming purposes; or (2) ascertain whether any offence under or by virtue of the Animal Welfare Act 2006 has been or is being committed in relation to such animals³. An inspector may enter premises⁴ which he reasonably believes to be premises on which animals are bred or kept for farming purposes in order to carry out such an inspection⁵, but this does not authorise entry to any part of premises which is used as a private dwelling⁶.

A justice of the peace may, on the application of an inspector, issue a warrant authorising an inspector to enter premises, if necessary using reasonable force, in order to carry out such an inspection⁷. The power to issue a warrant is exercisable only if the justice of the peace is satisfied (a) that it is reasonable to carry out an inspection on the premises; and (b) that the conditions for the grant of a warrant⁸ are satisfied in relation to the premises⁹.

1 As to the appointment of inspectors see PARA 823.

2 The regulations under the Animal Welfare Act 2006 s 12: see PARA 833.

3 Animal Welfare Act 2006 s 28(1). Specific powers and functions are conferred on an inspector exercising such a power of inspection: see s 53, Sch 2 paras 10-14. A person commits an offence if (1) he intentionally obstructs a person in the lawful exercise of a power to which Sch 2 para 10 applies; or (2) intentionally obstructs a person in the lawful exercise of a power conferred by Sch 2: Sch 2 para 16. A person guilty of any such offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale, or to both: s 32(4). As to the standard scale see PARA 738 note 1. In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). At the date at which this volume states the law, no such day had been appointed. As to other penalties of deprivation and disqualification see PARA 851 et seq.

4 As to the meaning of 'premises' see PARA 825 note 5.

5 Animal Welfare Act 2006 s 28(2). A person may only exercise a power of entry under s 28(2) if on request (1) he produces evidence of his identity and of his entitlement to exercise the power; (2) he outlines the purpose for which the power is exercised: Sch 2 para 4. In exercising such a power, a person may take with him onto the premises such persons as he thinks appropriate: Sch 2 para 5. Entry under such a power must be at a reasonable time, unless it appears to the person exercising the power that the purpose for which he is exercising the power would be frustrated on entry at a reasonable time: Sch 2 para 6. Where a person enters premises in the exercise of such a power of entry (or of a power of entry conferred by a warrant under s 28(4): see text and note 7), he may require any qualifying person on the premises to give him such assistance as he may reasonably require for the purpose for which entry is made: Sch 2 para 7(1), (2). The reference to a qualifying person is to (a) the occupier of the premises; (b) any person who appears to the person exercising the power to be responsible for animals on the premises; or (c) any person who appears to the person exercising the power to be under the direction or control of a person mentioned in head (a) or (b): Sch 2 para 7(3). In exercising such a power, a person may take with him such equipment and materials as he thinks appropriate: Sch 2 para 8. If, in the exercise of such a power of entry, a person enters premises which are unoccupied, he must leave them as effectively secured against entry as he found them: Sch 2 para 9.

A person commits an offence if he (i) intentionally obstructs a person in the lawful exercise of a power to which Sch 2 para 7 applies; (ii) intentionally obstructs a person in the lawful exercise of a power conferred by Sch 2; (iii) fails without reasonable excuse to give any assistance which he is required to give under Sch 2 para 7: Sch 2 para 16. As to the penalty see note 3.

6 Animal Welfare Act 2006 s 28(3). As to references to a part of premises used as a private dwelling see PARA 838 note 7.

7 Animal Welfare Act 2006 s 28(4). Specific requirements are imposed in relation to the issue of a warrant under s 28(4): see Sch 2 paras 2, 3. The provisions of Sch 2 paras 7-9 (see note 5) apply in relation to a power of entry conferred by such a warrant. As to offences in relation to those provisions see note 5.

8 Ie the conditions in the Animal Welfare Act 2006 s 52: see PARA 842.

9 Animal Welfare Act 2006 s 28(5).

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (v) Enforcement Powers/846. Prosecutions.

846. Prosecutions.

A local authority¹ in England or Wales may prosecute proceedings for any offence under the Animal Welfare Act 2006².

Notwithstanding the normal requirement that an information must be laid within six months from the time an offence was committed³, a magistrates' court may try an information relating to an offence under the Animal Welfare Act 2006 if the information is laid (1) before the end of the period of three years beginning with the date of the commission of the offence; and (2) before the end of the period of six months beginning with the date on which evidence which the prosecutor thinks is sufficient to justify the proceedings comes to his knowledge⁴.

1 As to the meaning of 'local authority' see PARA 823 note 2.

2 Animal Welfare Act 2006 s 30.

3 Ie under the Magistrates' Courts Act 1980 s 127(1): see **MAGISTRATES** vol 29(2) (Reissue) PARA 589.

4 Animal Welfare Act 2006 s 31(1). For these purposes, (1) a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to his knowledge is conclusive evidence of that fact; and (2) a certificate stating that matter and purporting to be so signed is to be treated as so signed unless the contrary is proved: s 31(2).

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (v) Enforcement Powers/847. Power to stop and detain vehicles.

847. Power to stop and detain vehicles.

A constable¹ in uniform or, if accompanied by such a constable, an inspector² may stop and detain a vehicle for the purpose of entering and searching it in the exercise of a power to search for a protected animal³ or under a warrant⁴ to search for a protected animal or for evidence of the commission of a relevant offence⁵.

A constable in uniform may stop and detain a vehicle for the purpose of entering and searching it in the exercise of a power to search for an animal involved in a fighting offence⁶ or under a warrant⁷ to exercise such power⁸.

If accompanied by a constable in uniform, an inspector may stop and detain a vehicle for the purpose of entering it and carrying out an inspection in the exercise of certain powers⁹ or under a warrant¹⁰ to inspect premises¹¹.

A vehicle may be detained for as long as is reasonably required to permit a search or inspection to be carried out (including the exercise of any related power under the Animal Welfare Act 2006) either at the place where the vehicle was first detained or nearby¹².

1 As to the office of constable see generally **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

2 As to the appointment of inspectors see PARA 823.

3 Ie under the power conferred by the Animal Welfare Act 2006 s 19(1): see PARA 838. As to the meaning of 'protected animal' see PARA 817 note 23.

4 Ie a warrant under the Animal Welfare Act 2006 s 19(4) (see PARA 838) or s 23(1) (see PARA 842).

5 Animal Welfare Act 2006 s 54(1). As to the meaning of 'relevant offence' see PARA 842 note 4. As to the power to stop and detain vessels, aircraft and hovercraft see PARA 848.

6 Ie under the power conferred by the Animal Welfare Act 2006 s 22(2): see PARA 841.

7 Ie under the Animal Welfare Act 2006 s 22(4): see PARA 841.

8 Animal Welfare Act 2006 s 54(2).

9 Ie powers conferred by the Animal Welfare Act 2006 s 26(2) (in connection with licences: see PARA 844), s 27(2) (in connection with registration: see PARA 844), s 28(2) (in connection with farm premises: see PARA 845) or s 29(2) (relating to Community obligations: see PARA 844).

10 Ie under the Animal Welfare Act 2006 s 28(4): see PARA 845.

11 Animal Welfare Act 2006 s 54(3). As to the meaning of 'premises' see PARA 825 note 5.

12 Animal Welfare Act 2006 s 54(4).

UPDATE

817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (v) Enforcement Powers/848. Power to stop and detain vessels, aircraft and hovercraft.

848. Power to stop and detain vessels, aircraft and hovercraft.

Where an inspector¹ appointed by the appropriate national authority² certifies in writing that he is satisfied that an offence under or by virtue of the Animal Welfare Act 2006 is being or has been committed on board a vessel in port, the vessel may be detained³. An inspector's certificate must specify each offence to which it relates and set out the inspector's reasons for being satisfied that each offence to which it relates is being or has been committed⁴. An officer who detains a vessel in reliance on an inspector's certificate must as soon as is reasonably practicable give a copy of it to the master or person in charge of the vessel⁵. A vessel may be detained until the appropriate national authority otherwise directs⁶.

The appropriate national authority may by regulations (1) apply these provisions to aircraft or hovercraft, with such modifications as the authority thinks fit; or (2) make such other provision for the detention of aircraft or hovercraft in relation to offences under or by virtue of the Animal Welfare Act 2006 as the authority thinks fit⁷.

1 As to the appointment of inspectors see PARA 823.

2 As to the meaning of 'appropriate national authority' see PARA 821 note 1.

3 Animal Welfare Act 2006 s 55(1). The Merchant Shipping Act 1995 s 284 (which provides for enforcement of the detention of a ship under that Act by specified officers: see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1253) applies as if the power of detention under the Animal Welfare Act 2006 s 55(1) were conferred by that Act: Animal Welfare Act 2006 s 55(3).

4 Animal Welfare Act 2006 s 55(2).

5 Animal Welfare Act 2006 s 55(4).

6 Animal Welfare Act 2006 s 55(5).

7 Animal Welfare Act 2006 s 55(6).

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (v) Enforcement Powers/849. Obtaining of documents in connection with carrying out orders etc.

849. Obtaining of documents in connection with carrying out orders etc.

Where an order in relation to an animal¹ has effect, and the owner of an animal to which the order relates has in his possession, or under his control, documents which are relevant to the carrying out of the order or any directions given in connection with it, the owner must, if so required by a person authorised to carry out the order, deliver the documents to that person as soon as practicable and in any event before the end of the period of ten days beginning with the date on which he is notified of the requirement².

Where directions about how an animal is to be dealt with pending an appeal³ have effect and the owner of an animal to which the directions relate has in his possession, or under his control, documents which are relevant to the carrying out of the directions, the owner must, if so required by a person authorised to carry out the directions, deliver the documents to that person as soon as practicable and in any event before the end of the period of ten days beginning with the date on which he is notified of the requirement⁴.

A person who fails without reasonable excuse to comply with the above requirements commits an offence⁵.

1 Ie an order under the Animal Welfare Act 2006 s 20(1) (see PARA 839), s 33(1) or (2) (see PARA 851), s 35(1) or (2) (see PARA 853) or s 37(1) (see PARA 854). As to the meaning of 'animal' see PARAS 817 note 23, 821 note 1.

2 Animal Welfare Act 2006 s 56(1).

3 Ie directions under the Animal Welfare Act 2006 s 41(3)(b): see PARA 857.

4 Animal Welfare Act 2006 s 56(2).

5 Animal Welfare Act 2006 s 56(3). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale, or to both: s 32(4). As to the standard scale see PARA 738 note 1. In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). At the date at which this volume states the law, no such day had been appointed. As to other penalties of deprivation and disqualification see PARA 851 et seq.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(vi) Post-conviction Powers

850. In general.

In addition to penalties of imprisonment and fines¹, the Animal Welfare Act 2006 provides a number of other post-conviction powers for the court in respect of offences². Such powers include deprivation of ownership of an animal³, disqualification from owning or keeping animals⁴, seizure of animals in connection with disqualification⁵, destruction in the interests of the animal⁶, powers in relation to fighting offences⁷, forfeiture of equipment used in offences⁸, and cancellation of, or disqualification from holding, a licence⁹.

1 le under the Animal Welfare Act 2006 s 32, which is dealt with under specific offences.

2 See the Animal Welfare Act 2006 s 33-45; and PARAS 851-860.

3 See the Animal Welfare Act 2006 s 33; and PARA 851.

4 See the Animal Welfare Act 2006 s 34; and PARA 852.

5 See the Animal Welfare Act 2006 ss 35, 36; and PARA 853.

6 See the Animal Welfare Act 2006 s 37; and PARA 854.

7 See the Animal Welfare Act 2006 ss 38, 39; and PARA 855.

8 See the Animal Welfare Act 2006 s 40; and PARA 856.

9 See the Animal Welfare Act 2006 ss 42, 43; and PARA 858.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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851. Deprivation of ownership of animal.

If the person convicted of a specified offence under the Animal Welfare Act 2006¹ is the owner of an animal² in relation to which the offence was committed³, the court by or before which he is convicted may, instead of or in addition to dealing with him in any other way, make an order depriving him of ownership of the animal and for its disposal⁴. Where the owner of an animal is convicted of an offence⁵ of breaching a disqualification order because ownership of the animal is in breach of a disqualification⁶, the court by or before which he is convicted may, instead of or in addition to dealing with him in any other way, make an order depriving him of ownership of the animal and for its disposal⁷.

Where the animal in respect of which an order under the above provisions is made has any dependent offspring, the order may include provision depriving the person to whom it relates of ownership of the offspring and for its disposal⁸.

Where a court makes an order under these provisions, it may⁹:

- 58 (1) appoint a person to carry out, or arrange for the carrying out of, the order¹⁰;
- 59 (2) require any person who has possession of an animal to which the order applies to deliver it up to enable the order to be carried out¹¹;
- 60 (3) give directions with respect to the carrying out of the order¹²;
- 61 (4) confer additional powers (including power to enter premises¹³ where an animal to which the order applies is being kept) for the purpose of, or in connection with, the carrying out of the order¹⁴;
- 62 (5) order the offender to reimburse the expenses of carrying out the order¹⁵.

Where a court decides not to make a deprivation of ownership order in relation to an offender, it must give its reasons for the decision in open court and, if it is a magistrates' court, cause them to be entered in the register of its proceedings¹⁶.

1 Ie an offence under any of the Animal Welfare Act 2006 ss 4, 5, 6(1), (2), 7, 8 and 9. See PARAS 826-831.

2 As to the meaning of 'animal' see PARAS 817 note 23, 821 note 1.

3 The reference to an animal in relation to which an offence was committed includes, in the case of an offence under the Animal Welfare Act 2006 s 8 (see PARA 830), an animal which took part in an animal fight in relation to which the offence was committed: s 33(8).

4 Animal Welfare Act 2006 s 33(1). In s 33, references to disposing of an animal include destroying it: s 33(9).

5 Ie under the Animal Welfare Act 2006 s 34(9): see PARA 852.

6 Ie a disqualification under the Animal Welfare Act 2006 s 34(2): see PARA 852.

7 Animal Welfare Act 2006 s 33(2).

8 Animal Welfare Act 2006 s 33(3).

9 Animal Welfare Act 2006 s 33(4).

10 Animal Welfare Act 2006 s 33(4)(a).

- 11 Animal Welfare Act 2006 s 33(4)(b).
- 12 Animal Welfare Act 2006 s 33(4)(c). Such directions may specify the manner in which an animal is to be disposed of, or delegate the decision about the manner in which an animal is to be disposed of to a person appointed under s 33(4)(a): s 33(5).
- 13 As to the meaning of 'premises' see PARA 825 note 5.
- 14 Animal Welfare Act 2006 s 33(4)(d).
- 15 Animal Welfare Act 2006 s 33(4)(e).
- 16 Animal Welfare Act 2006 s 33(6). This does not apply where the court makes an order under s 34(1) (disqualification: see PARA 852) in relation to the offender: s 33(7).

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852. Disqualification from owning or keeping animals, etc.

If a person is convicted of a specified offence under the Animal Welfare Act 2006¹, the court by or before which he is convicted may, instead of or in addition to dealing with him in any other way, make an order disqualifying him under any one or more of the following heads for such period as it thinks fit²:

- 63 (1) disqualification under this head disqualifies a person (a) from owning animals³; (b) from keeping animals; (c) from participating in the keeping of animals; and (d) from being party to an arrangement under which he is entitled to control or influence the way in which animals are kept⁴;
- 64 (2) disqualification under this head disqualifies a person from dealing in animals⁵;
- 65 (3) disqualification under this head disqualifies a person (a) from transporting animals; and (b) from arranging for the transport of animals⁶.

Disqualification under head (1), (2) or (3) may be imposed in relation to animals generally, or in relation to animals of one or more kinds⁷.

The court by which an order of disqualification is made may specify a period during which the offender may not make an application⁸ for termination of the order⁹. The court may (i) suspend the operation of the order pending an appeal¹⁰; or (ii) where it appears to the court that the offender owns or keeps an animal to which the order applies, suspend the operation of the order, and of any seizure order¹¹ in connection with the disqualification, for such period as it thinks necessary for enabling alternative arrangements to be made in respect of the animal¹².

Where a court decides not to make a disqualification order in relation to an offender, it must give its reasons for the decision in open court and, if it is a magistrates' court, cause them to be entered in the register of its proceedings¹³.

A person who breaches a disqualification imposed by an order under these provisions commits an offence¹⁴.

1 Is an offence under any of the Animal Welfare Act 2006 ss 4, 5, 6(1), (2), 7, 8, 9, 13(6) and 34(9): s 34(10). See PARAS 826-831, 834 and text to note 14.

2 Animal Welfare Act 2006 s 34(1). As to termination of an order see PARA 859. These provisions are wider than those under the Protection of Animals (Amendment) Act 1954 s 1 (repealed), under which the order could only disqualify a person from having custody, and not from ownership. A disqualification from having custody of 'cattle' extends to sheep: *Wastie v Phillips* [1972] 3 All ER 302, [1972] 1 WLR 1293, DC. As to what may constitute 'custody' for the purposes of the Protection of Animals (Amendment) Act 1954 s 1 (repealed) see *Taylor v Royal Society for the Prevention of Cruelty to Animals* [2001] EWHC 103 (Admin), (2001) 165 JP 567 (physical control of horses exercised by the accused, without the owner's supervision, amounted to custody), applying *RSPCA v Miller* [1994] Crim LR 516, DC; and *Arthur v RSPCA* [2005] EWHC 2616 (Admin), 169 JP 676, [2005] All ER (D) 224 (Oct) (no difference, as a matter of law, in the circumstances of the case, between custody and keeping for the purposes of the 1954 Act).

3 As to the meaning of 'animal' see PARAS 817 note 23, 821 note 1.

4 Animal Welfare Act 2006 s 34(2).

5 Animal Welfare Act 2006 s 34(3).

6 Animal Welfare Act 2006 s 34(4).

7 Animal Welfare Act 2006 s 34(5). Under the former legislation, it was held that a court contemplating the imposition of an order disqualifying a defendant from having custody of animals had no discretion as to the number of animals that could be kept: see *R (on the application of the Royal Society for the Prevention of Cruelty to Animals) v Chester Crown Court* [2006] EWHC 1273 (Admin), 170 JP 725, [2006] All ER (D) 244 (May).

8 le under the Animal Welfare Act 2006 s 43(1).

9 Animal Welfare Act 2006 s 34(6).

10 Animal Welfare Act 2006 s 34(7)(a).

11 le under the Animal Welfare Act 2006 s 35: see PARA 853.

12 Animal Welfare Act 2006 s 34(7)(b).

13 Animal Welfare Act 2006 s 34(8).

14 Animal Welfare Act 2006 s 34(9). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 5 on the standard scale, or to both: s 32(2). As to the standard scale see PARA 738 note 1. In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). At the date at which this volume states the law, no such day had been appointed. Under the previous legislation, it was held that where a person in breach of a disqualification order has not abandoned his animals, the civil courts have no jurisdiction to grant an injunction allowing a local authority to enter his land to remove them: *Worcestershire County Council v Tongue* [2004] EWCA Civ 140, [2004] Ch 236, [2004] 2 WLR 1193 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 573). See also *Guildford Borough Council v Hein* [2005] EWCA Civ 979, [2005] LGR 797 (local authority granted injunction to restrict ownership of dogs where likely that criminal offences would otherwise be committed).

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853. Seizure of animals in connection with disqualification.

Where a court makes a disqualification order¹ and it appears to the court that the person to whom the order applies owns or keeps any animal² contrary to the disqualification imposed by the order, it may order that all animals he owns or keeps contrary to the disqualification be taken into possession³. Where a person is convicted of an offence⁴ because of owning or keeping an animal in breach of disqualification⁵, the court by or before which he is convicted may order that all animals he owns or keeps in breach of the disqualification be taken into possession⁶. Such an order for taking animals into possession, so far as relating to any animal owned by the person subject to disqualification, has effect as an order for the disposal of the animal⁷.

Any animal taken into possession in pursuance of an order under these provisions that is not owned by the person subject to disqualification must be dealt with in such manner as the appropriate court⁸ may order⁹. A court may not make an order for disposal under this provision unless it has given the owner of the animal an opportunity to be heard or it is satisfied that it is not reasonably practicable to communicate with the owner¹⁰. Where a court makes an order under this provision for the disposal of an animal, the owner may, in the case of an order made by a magistrates' court, appeal against the order to the Crown Court, and, in the case of an order made by the Crown Court, appeal against the order to the Court of Appeal¹¹.

The court by which a seizure order¹² is made may¹³:

- 66 (1) appoint a person to carry out, or arrange for the carrying out of, the order¹⁴;
- 67 (2) require any person who has possession of an animal to which the order applies to deliver it up to enable the order to be carried out¹⁵;
- 68 (3) give directions with respect to the carrying out of the order¹⁶;
- 69 (4) confer additional powers (including power to enter premises¹⁷ where an animal to which the order applies is being kept) for the purpose of, or in connection with, the carrying out of the order¹⁸;
- 70 (5) order the person subject to disqualification, or another person, to reimburse the expenses of carrying out the order¹⁹.

In determining how to exercise its powers under these provisions²⁰, the court must have regard, amongst other things, to (a) the desirability of protecting the value of any animal to which the order applies; and (b) the desirability of avoiding increasing any expenses which a person may be ordered to reimburse²¹.

If the owner of an animal ordered to be disposed of is subject to a liability to reimburse expenses²², any amount to which he is entitled as a result of sale of the animal may be reduced by an amount equal to that liability²³.

1 Ie an order under the Animal Welfare Act 2006 s 34(1): see PARA 852.

2 As to the meaning of 'animal' see PARAS 817 note 23, 821 note 1.

3 Animal Welfare Act 2006 s 35(1).

4 Ie under the Animal Welfare Act 2006 s 34(9): see PARA 852.

- 5 le a disqualification under the Animal Welfare Act 2006 s 34(2): see PARA 852.
- 6 Animal Welfare Act 2006 s 35(2).
- 7 Animal Welfare Act 2006 s 35(3). In s 35, references to disposing of an animal include destroying it: s 35(8).
- 8 The reference to the appropriate court is to (1) the court which made the order under the Animal Welfare Act 2006 s 35(1) or (2); or (2) in the case of an order made by a magistrates' court, to a magistrates' court for the same local justice area as that court: s 35(7).
- 9 Animal Welfare Act 2006 s 35(4).
- 10 Animal Welfare Act 2006 s 35(5).
- 11 Animal Welfare Act 2006 s 35(6).
- 12 le an order under the Animal Welfare Act 2006 s 35.
- 13 Animal Welfare Act 2006 s 36(1).
- 14 Animal Welfare Act 2006 s 36(1)(a).
- 15 Animal Welfare Act 2006 s 36(1)(b).
- 16 Animal Welfare Act 2006 s 36(1)(c). Such directions may (1) specify the manner in which an animal is to be disposed of; or (2) delegate the decision about the manner in which an animal is to be disposed of to a person appointed under s 36(1)(a): s 36(2). In determining how to exercise a power delegated under head (2), a person must have regard, amongst other things, to the things mentioned in s 36(3)(a), (b) (see heads (a), (b) in the text): s 36(4).
- 17 As to the meaning of 'premises' see PARA 825 note 5.
- 18 Animal Welfare Act 2006 s 36(1)(d).
- 19 Animal Welfare Act 2006 s 36(1)(e).
- 20 le the Animal Welfare Act 2006 ss 35, 36.
- 21 Animal Welfare Act 2006 s 36(3).
- 22 le by virtue of the Animal Welfare Act 2006 s 36(1)(e): see head (5) in the text.
- 23 Animal Welfare Act 2006 s 36(5).

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854. Destruction in interests of animal.

The court by or before which a person is convicted of a specified offence under the Animal Welfare Act 2006¹ may order the destruction of an animal² in relation to which the offence was committed³ if it is satisfied, on the basis of evidence given by a veterinary surgeon⁴, that it is appropriate to do so in the interests of the animal⁵. A court may not make such an order unless (1) it has given the owner of the animal an opportunity to be heard; or (2) it is satisfied that it is not reasonably practicable to communicate with the owner⁶.

Where a court makes an order for the destruction of an animal, it may⁷:

- 71 (a) appoint a person to carry out, or arrange for the carrying out of, the order⁸;
- 72 (b) require a person who has possession of the animal to deliver it up to enable the order to be carried out⁹;
- 73 (c) give directions with respect to the carrying out of the order (including directions about how the animal is to be dealt with until it is destroyed)¹⁰;
- 74 (d) confer additional powers (including power to enter premises¹¹ where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order¹²;
- 75 (e) order the offender or another person to reimburse the expenses of carrying out the order¹³.

Where a court makes an order for the destruction of an animal, the offender and, if different, the owner of the animal may each (i) in the case of an order made by a magistrates' court, appeal against the order to the Crown Court; (ii) in the case of an order made by the Crown Court, appeal against the order to the Court of Appeal¹⁴. This does not apply if the court by which the order is made directs that it is appropriate in the interests of the animal that the carrying out of the order should not be delayed¹⁵.

1 le an offence under any of the Animal Welfare Act 2006 ss 4, 5, 6(1), (2), 7, 8(1), (2) and 9. See PARAS 826-831.

2 As to the meaning of 'animal' see PARAS 817 note 23, 821 note 1.

3 The reference to an animal in relation to which an offence was committed includes, in the case of an offence under the Animal Welfare Act 2006 s 8(1) or (2), an animal which took part in an animal fight in relation to which the offence was committed: s 37(6).

4 As to the meaning of 'veterinary surgeon' see PARA 828 note 4.

5 Animal Welfare Act 2006 s 37(1). As to destruction of animals involved in fighting offences see PARA 855.

6 Animal Welfare Act 2006 s 37(2).

7 Animal Welfare Act 2006 s 37(3).

8 Animal Welfare Act 2006 s 37(3)(a).

9 Animal Welfare Act 2006 s 37(3)(b).

10 Animal Welfare Act 2006 s 37(3)(c).

- 11 As to the meaning of 'premises' see PARA 825 note 5.
- 12 Animal Welfare Act 2006 s 37(3)(d).
- 13 Animal Welfare Act 2006 s 37(3)(e).
- 14 Animal Welfare Act 2006 s 37(4).
- 15 Animal Welfare Act 2006 s 37(5).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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855. Powers in relation to fighting offences.

The court by or before which a person is convicted of an offence involving an animal fight¹ may order the destruction of an animal in relation to which the offence was committed² on grounds other than the interests of the animal³. A court may not make such an order unless (1) it has given the owner of the animal an opportunity to be heard; or (2) it is satisfied that it is not reasonably practicable to communicate with the owner⁴. Where a court makes such an order, it may⁵:

- 76 (a) appoint a person to carry out, or arrange for the carrying out of, the order⁶;
- 77 (b) require a person who has possession of the animal to deliver it up to enable the order to be carried out⁷;
- 78 (c) give directions with respect to the carrying out of the order (including directions about how the animal is to be dealt with until it is destroyed)⁸;
- 79 (d) confer additional powers (including power to enter premises⁹ where the animal is being kept) for the purpose of, or in connection with, the carrying out of the order¹⁰;
- 80 (e) order the offender or another person to reimburse the expenses of carrying out the order¹¹.

Where a court makes an order for destruction in relation to an animal which is owned by a person other than the offender, that person may (i) in the case of an order made by a magistrates' court, appeal against the order to the Crown Court; or (ii) in the case of an order made by the Crown Court, appeal against the order to the Court of Appeal¹².

The court by or before which a person is convicted of an offence involving an animal fight¹³ may order the offender or another person to reimburse any expenses incurred by the police in connection with the keeping of an animal in relation to which the offence was committed¹⁴.

1 le an offence under the Animal Welfare Act 2006 s 8(1) or (2): see PARA 830. As to the meaning of 'animal' see PARAS 817 note 23, 821 note 1.

2 The reference to an animal in relation to which the offence was committed includes an animal which took part in an animal fight in relation to which the offence was committed: Animal Welfare Act 2006 s 38(5).

3 Animal Welfare Act 2006 s 38(1).

4 Animal Welfare Act 2006 s 38(2).

5 Animal Welfare Act 2006 s 38(3).

6 Animal Welfare Act 2006 s 38(3)(a).

7 Animal Welfare Act 2006 s 38(3)(b).

8 Animal Welfare Act 2006 s 38(3)(c).

9 As to the meaning of 'premises' see PARA 825 note 5.

10 Animal Welfare Act 2006 s 38(3)(d).

11 Animal Welfare Act 2006 s 38(3)(e).

12 Animal Welfare Act 2006 s 38(4).

13 Is an offence under the Animal Welfare Act 2006 s 8(1) or (2): see PARA 830.

14 Animal Welfare Act 2006 s 39(1). The reference to an animal in relation to which the offence was committed includes an animal which took part in a fight in relation to which the offence was committed: s 39(2).

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856. Forfeiture of equipment used in offences.

Where a person is convicted of a specified offence under the Animal Welfare Act 2006¹, the court by or before which he is convicted may order any qualifying item which is shown to the satisfaction of the court to relate to the offence to be (1) forfeited; and (2) destroyed or dealt with in such manner as may be specified in the order².

The reference to any qualifying item is³:

- 81 (a) in the case of a conviction for an offence of causing unnecessary suffering⁴, to anything designed or adapted for causing suffering to an animal⁵;
- 82 (b) in the case of a conviction for an offence of mutilation⁶, to anything designed or adapted for carrying out a prohibited procedure⁷ on an animal⁸;
- 83 (c) in the case of a conviction for an offence relating to the docking of dogs' tails⁹, to anything designed or adapted for removing the whole or any part of a dog's tail¹⁰;
- 84 (d) in the case of a conviction for an offence relating to the administration of a poisonous substance or drug to an animal¹¹, to anything designed or adapted for administering any drug or substance to an animal¹²;
- 85 (e) in the case of a conviction for an offence relating to an animal fight¹³, to anything designed or adapted for use in connection with an animal fight¹⁴;
- 86 (f) in the case of a conviction for an offence relating to a video recording of an animal fight¹⁵, to a video recording of an animal fight, including anything on or in which the recording is kept¹⁶.

The court must not order anything to be forfeited if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless he has been given an opportunity to show cause why the order should not be made¹⁷.

1 Ie an offence under any of the Animal Welfare Act 2006 ss 4, 5, 6(1), (2), 7 and 8. See PARAS 826-830.

2 Animal Welfare Act 2006 s 40(1).

3 Animal Welfare Act 2006 s 40(2). An expression used in any of s 40(2)(a)-(f) has the same meaning as in the provision referred to in that paragraph: s 40(4).

4 Ie an offence under the Animal Welfare Act 2006 s 4: see PARA 826.

5 Animal Welfare Act 2006 s 40(2)(a). As to the meaning of 'animal' see PARAS 817 note 23, 821 note 1.

6 Ie an offence under the Animal Welfare Act 2006 s 5: see PARA 827.

7 As to the meaning of 'prohibited procedure' see PARA 827 note 1.

8 Animal Welfare Act 2006 s 40(2)(b).

9 Ie an offence under the Animal Welfare Act 2006 s 6(1) or (2): see PARA 828.

10 Animal Welfare Act 2006 s 40(2)(c).

11 Ie an offence under the Animal Welfare Act 2006 s 7: see PARA 829.

- 12 Animal Welfare Act 2006 s 40(2)(d).
- 13 Is an offence under the Animal Welfare Act 2006 s 8(1) or (2): see PARA 830.
- 14 Animal Welfare Act 2006 s 40(2)(e).
- 15 Is an offence under the Animal Welfare Act 2006 s 8(3) (in force as from a day to be appointed): see PARA 830.
- 16 Animal Welfare Act 2006 s 40(2)(f).
- 17 Animal Welfare Act 2006 s 40(3).

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (vi) Post-conviction Powers/857. Orders pending appeal.

857. Orders pending appeal.

Nothing may be done under an order of deprivation of ownership¹, of seizure in connection with disqualification², or of destruction in the interests of an animal³ or of an animal involved in a fighting offence⁴ with respect to an animal, or under an order of forfeiture⁵ unless (1) the period for giving notice of appeal against the order has expired; (2) the period for giving notice of appeal against the conviction on which the order was made has expired; and (3) if the order or conviction is the subject of an appeal, the appeal has been determined or withdrawn⁶.

Where the effect of an order is suspended, (a) no requirement imposed or directions given in connection with the order have effect; but (b) the court may give directions about how any animal to which the order applies is to be dealt with during the suspension⁷.

Where the effect of an order of deprivation of ownership is suspended, the person to whom the order relates may not sell or part with any animal to which the order applies⁸. Failure to comply with this prohibition is an offence⁹.

1 Ie under the Animal Welfare Act 2006 s 33: see PARA 851.

2 Ie under the Animal Welfare Act 2006 s 35: see PARA 853.

3 Ie under the Animal Welfare Act 2006 s 37: see PARA 854. Section 41(1) does not apply to an order under s 37(1) if the order is the subject of a direction under s 37(5): s 41(2). As to the meaning of 'animal' see PARAS 817 note 23, 821 note 1.

4 Ie under the Animal Welfare Act 2006 s 38: see PARA 855.

5 Ie under the Animal Welfare Act 2006 s 40: see PARA 856.

6 Animal Welfare Act 2006 s 41(1).

7 Animal Welfare Act 2006 s 41(3). Such directions may, in particular (1) authorise the animal to be taken into possession; (2) authorise the removal of the animal to a place of safety; (3) authorise the animal to be cared for either on the premises where it was being kept when it was taken into possession or at some other place; (4) appoint a person to carry out, or arrange for the carrying out, of the directions; (5) require any person who has possession of the animal to deliver it up for the purposes of the directions; (6) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the directions; or (7) provide for the recovery of any expenses in relation to removal or care of the animal which are incurred in carrying out the directions: s 41(4). Any expenses a person is directed to pay under head (7) are recoverable summarily as a civil debt: s 41(5). As to the meaning of 'premises' see PARA 825 note 5.

8 Animal Welfare Act 2006 s 41(6).

9 Animal Welfare Act 2006 s 41(7). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale, or to both: s 32(4). As to the standard scale see PARA 738 note 1. In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks is to be read as a reference to six months: Animal Welfare Act 2006 s 32(5). At the date at which this volume states the law, no such day had been appointed.

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (vi) Post-conviction Powers/858. Orders with respect to licences.

858. Orders with respect to licences.

If a person is convicted of a specified offence under the Animal Welfare Act 2006¹, the court by or before which he is convicted may, instead of or in addition to dealing with him in any other way (1) make an order cancelling any licence² held by him; or (2) make an order disqualifying him, for such period as it thinks fit, from holding a licence³. Disqualification may be imposed in relation to licences generally or in relation to licences of one or more kinds⁴. The court by which an order of disqualification is made may specify a period during which the offender may not make an application⁵ for termination of the order⁶. The court by which an order of cancellation or disqualification is made may suspend the operation of the order pending an appeal⁷.

1 le any of the Animal Welfare Act 2006 ss 4, 5, 6(1), (2), 7-9, 11 and 13(6). See PARAS 826-831, 832, 834.

2 As to the meaning of 'licence' see PARA 843 note 2.

3 Animal Welfare Act 2006 s 42(1).

4 Animal Welfare Act 2006 s 42(2).

5 le under the Animal Welfare Act 2006 s 43(1): see PARA 859.

6 Animal Welfare Act 2006 s 42(3).

7 Animal Welfare Act 2006 s 42(4).

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (vi) Post-conviction Powers/859. Termination of disqualification.

859. Termination of disqualification.

A person who is disqualified from owning or keeping animals¹ or from holding a licence² by virtue of an order of the court may apply to the appropriate court³ for the termination of the order⁴. No such application may be made:

- 87 (1) before the end of the period of one year beginning with the date on which the order is made;
- 88 (2) where a previous application has been made in relation to the same order, before the end of the period of one year beginning with the date on which the previous application was determined; or
- 89 (3) before the end of any period specified⁵ in relation to the order⁶.

On an application for termination of a disqualification order, the court may (a) terminate the disqualification; (b) vary the disqualification so as to make it less onerous; or (c) refuse the application⁷.

When determining an application, the court must have regard to the character of the applicant, his conduct since the imposition of the disqualification and any other circumstances of the case⁸. Where the court refuses an application, it may specify a period during which the applicant may not make a further application in relation to the order concerned⁹.

The court may order an applicant to pay all or part of the costs of the application¹⁰.

1 Ie by virtue of the Animal Welfare Act 2006 s 34: see PARA 852.

2 Ie by virtue of the Animal Welfare Act 2006 s 42: see PARA 858. As to the meaning of 'licence' see PARA 843 note 2.

3 The reference to the appropriate court is to (1) the court which made the order under the Animal Welfare Act 2006 s 34 or 42; or (2) in the case of an order made by a magistrates' court, to a magistrates' court acting for the same local justice area as that court: s 43(7).

4 Animal Welfare Act 2006 s 43(1).

5 Ie under the Animal Welfare Act 2006 s 34(6) (see PARA 852), s 42(3) (see PARA 858) or s 43(5) (see text to note 9).

6 Animal Welfare Act 2006 s 43(2).

7 Animal Welfare Act 2006 s 43(3).

8 Animal Welfare Act 2006 s 43(4).

9 Animal Welfare Act 2006 s 43(5).

10 Animal Welfare Act 2006 s 43(6).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (vi) Post-conviction Powers/860. Orders for reimbursement of expenses.

860. Orders for reimbursement of expenses.

Where an order is made for the reimbursement of expenses¹, the expenses that are required by the order to be reimbursed are not to be regarded for the purposes of the Magistrates' Courts Act 1980² as a sum adjudged to be paid by a summary conviction, but are recoverable summarily as a civil debt³.

Where a court makes an order for reimbursement of expenses against a person other than the person subject to disqualification⁴ or against a person other than the offender⁵, the person against whom the order is made may (1) in the case of an order made by a magistrates' court, appeal against the order to the Crown Court; (2) in the case of an order made by the Crown Court, appeal against the order to the Court of Appeal⁶.

1 Ie under the Animal Welfare Act 2006 s 33(4)(e), 36(1)(e), 37(3)(e), 38(3)(e) or 39(1). See PARAS 851 head (5), 853 head (5), 854 head (e), 855 head (e), 855 text to notes 13-14.

2 See **MAGISTRATES**.

3 Animal Welfare Act 2006 s 44.

4 Ie under the Animal Welfare Act 2006 s 36(1)(e): see PARA 853 head (5).

5 Ie under the Animal Welfare Act 2006 s 37(3)(e), 38(3)(e) or 39(1): see PARAS 854 head (e), 855 head (e), 855 text to notes 13-14.

6 Animal Welfare Act 2006 s 45.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (2) ANIMAL WELFARE UNDER THE ANIMAL WELFARE ACT 2006/ (vi) Post-conviction Powers/861. Offences by bodies corporate.

861. Offences by bodies corporate.

Where an offence under the Animal Welfare Act 2006 is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of (1) any director, manager, secretary or other similar officer of the body corporate; or (2) any person who was purporting to act in any such capacity, he (as well as the body corporate) commits the offence and is liable to be proceeded against and punished accordingly¹. Where the affairs of a body corporate are managed by its members, this applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate².

1 Animal Welfare Act 2006 s 57(1).

2 Animal Welfare Act 2006 s 57(2).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (3) DISQUALIFICATION ETC UNDER OTHER ACTS/862. Disqualification etc.

(3) DISQUALIFICATION ETC UNDER OTHER ACTS

862. Disqualification etc.

Upon the conviction of an offender for an offence of cruelty¹ the court may cancel any licence he holds to keep a pet shop, animal boarding establishment or riding establishment and disqualify him from keeping such a shop or establishment², may order the removal of any registration he has in respect of performing animals and disqualify him from being registered³, and may disqualify him from keeping a dangerous wild animal⁴.

¹ In any offence under the Protection of Animals Act 1911, the Pet Animals Act 1951, the Animal Boarding Establishments Act 1963, the Riding Establishments Act 1964, the Performing Animals (Regulation) Act 1925, or under any of the Animal Welfare Act 2006 ss 4, 5, 6(1), (2), 7-9, 11.

² Pet Animals Act 1951 s 5(3) (amended by the Animal Welfare Act 2006 s 64, Sch 3 para 3(2)) (see PARA 937); Animal Boarding Establishments Act 1963 s 3(3) (amended by the Animal Welfare Act 2006 Sch 3 para 5(2)) (see PARA 938); Riding Establishments Act 1964 s 4(3) (amended by the Animal Welfare Act 2006 Sch 3 para 6(2)) (see PARA 942).

³ Performing Animals (Regulation) Act 1925 s 4(2) (amended by the Animal Welfare Act 2006 Sch 3 para 1); see PARA 873.

⁴ Dangerous Wild Animals Act 1976 s 6(2) (amended by the Animal Welfare Act 2006 Sch 3 para 9); see PARA 1029.

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (4) MISCELLANEOUS PROVISIONS RELATING TO THE PROTECTION OF ANIMALS/863. Farriery.

(4) MISCELLANEOUS PROVISIONS RELATING TO THE PROTECTION OF ANIMALS

863. Farriery.

The practice of farriery¹ has been regulated in order, inter alia, to prevent and avoid suffering by and cruelty to horses arising from the shoeing of horses by unskilled persons². A Farriers Registration Council has been established³. The council is charged with keeping and maintaining a register of farriers⁴. Only those who satisfy the council that they have gained adequate experience and expertise in farriery may be included in the register⁵. A person who is judged⁶ to be guilty of serious misconduct in any professional respect, a person who was not in fact qualified for registration at the time he was registered, a person convicted of an offence involving cruelty to animals, and a person registered as entitled to provide services as a farrier on a temporary and occasional basis who ceases⁷ to be so entitled, may be removed from the register, or his registration may be suspended for a specified period⁸.

It is an offence (subject to certain exceptions⁹) for a person who is not registered¹⁰ to carry out any farriery¹¹, and it is also an offence for such a person to use or adopt the style, title or description 'farrier' or 'shoeing smith' or any other style, title or description which is likely to cause any other person to believe that he is so registered¹². Additionally, it is an offence for any person wilfully¹³ to procure or attempt to procure the entry of his name in the register by making or producing or causing to be made or produced any false or fraudulent representation or declaration¹⁴. Each of these offences is punishable on summary conviction with a fine not exceeding level 3 on the standard scale¹⁵.

The Worshipful Company of Farriers has the general function of securing adequate standards of competence and conduct among farriers, and must promote, encourage and advance the art and science of farriery and education in connection therewith¹⁶.

Provision is made with regard to (1) the constitution and powers of the Farriers Registration Council, and the regulation of its proceedings¹⁷; (2) the making of rules with regard to the register¹⁸; (3) appeals against refusal of registration, and the determination of questions relating to applications for registration¹⁹; (4) the issue of certificates of registration²⁰; (5) the approval by the Council of courses, qualifications and institutions in the United Kingdom for farriery²¹, and the supervision of institutions and examinations²²; (6) the establishment and constitution of an Investigating Committee for the preliminary investigation of cases where it is alleged that a person is liable to have his name erased from the register ('disciplinary cases')²³; (7) the establishment, constitution and procedure of a Disciplinary Committee, for the consideration and determination of disciplinary and other cases²⁴; (8) the removal from the register of the names of deceased persons and those who have applied for their names to be removed²⁵; and (9) the service of documents²⁶.

1 'Farriery' here means any work in connection with the preparation or treatment of the foot of a horse for the immediate reception of a shoe thereon, the fitting by nailing or otherwise of a shoe to the foot or the finishing off of such work to the foot: Farriers (Registration) Act 1975 s 18. This definition appears not to cover filing, rasping or trimming a horse's hoof in order to keep it in good condition, at least not when a shoe is not immediately thereafter fitted, even though these are operations commonly and properly entrusted to farriers.

2 See the Farriers (Registration) Act 1975, long title.

3 See the Farriers (Registration) Act 1975 s 2.

4 Farriers (Registration) Act 1975 s 3(1). As to the maintenance, inspection and publication of the register see s 3(2), (2A), (3), (4) (s 2(2A) added by SI 2008/646).

5 See the Farriers (Registration) Act 1975 s 7 (ss 7-9 substituted by SI 2008/646). Subject to the Farriers (Registration) Act 1975 s 15 (see text and notes 6-8), a person is entitled to be registered in Part I of the register if he applies for registration and satisfies the council that he is appropriately qualified, and if he pays the fees prescribed under s 4. Registration is open to (1) those who on 1 January 1976 were registered in the Register of Farriers kept by the Worshipful Company of Farriers (the Company) (see text and note 16); (2) those who have satisfied such conditions as to apprenticeship or training or both as the council may prescribe and have passed a prescribed examination; (3) those who have completed a course of training as a farrier in Her Majesty's Army and have passed a prescribed examination; (4) those who are or have been registered in Part II or Part IV of the register, and have passed a prescribed examination; (5) those who hold a qualification (a) granted otherwise than in a relevant European state; and (b) for the time being accepted for these purposes by the council, and who during any period of two years subsequent to the date when they obtained their qualifications have been regularly and gainfully engaged in the shoeing of horses; (6) those who are entitled to be recognised as a farrier pursuant to the European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781, Pt 3 Ch 1 or 2 (regs 20-27, 28) and have satisfied any procedural requirements of those regulations that apply for the purposes of such recognition; and (7) those who are or have been registered in Part II or Part IV of the register and possesses experience in shoeing horses obtained in the United Kingdom as set out in the European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781, Sch 4 para 1: see the Farriers' (Registration) Act 1975 s 7(1) (as so substituted). 'Relevant European state' means an EEA state or Switzerland: s 7(9) (as so substituted).

Subject to s 15, a person is entitled to be registered in Part II of the register if he applies for registration before such date as may be prescribed and satisfies the council that during any period of two years before the date of his application or such shorter period as the council may approve he was either, otherwise than as an apprentice or while undergoing a course of training, regularly engaged in the shoeing of horses in a business which consists exclusively of such shoeing or is the business of a blacksmith or general smith of which the shoeing of horses forms a part or practising as a farrier in Her Majesty's Army: s 7(2) (as so substituted). Subject to s 15, a person is entitled to be registered in Part III of the register if he applies for registration before such date as may be prescribed and satisfies the council by means of a certificate by a practising veterinary surgeon, which must be in the prescribed form, or by such other evidence as the council may in his case consider appropriate, that during any period of two years before the date of his application for registration he has regularly and competently carried out the shoeing of horses belonging to himself or otherwise than by way of trade or for reward, carried out the shoeing of horses belonging to other persons: s 7(3) (as so substituted). Subject to s 15, a person is entitled to be registered in Part IV of the register if (i) being a person who is not otherwise entitled to be registered under the Farriers' (Registration) Act 1975 he applies for registration before such date as may be prescribed and satisfies the council that during any period of two years before the date of his application for registration or such shorter period as the council may approve he has been regularly and gainfully engaged in the shoeing of horses otherwise than as an apprentice or while undergoing a course of training; or (ii) being a person who has not passed a prescribed examination he applies for registration before the date prescribed pursuant to head (i) and satisfies the council that he has complied with the conditions as to apprenticeship or training prescribed by the council in accordance with s 7(1)(b) and such additional conditions, if any, as to further apprenticeship or training as the council may require in his case: s 7(4) (as so substituted). In any case in which it appears to the council that a person has for sufficient reason failed to make an application under s 7(2), (3) or (4) before such dates as the council may have respectively prescribed, the council may direct that he is entitled to apply within such period as may be specified in that direction: s 7(5) (as so substituted).

Subject to s 15, a person is entitled to be registered in Part V of the register if the person has the benefit of the European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781, reg 8 in connection with the provision by the person of services as a farrier on a temporary and occasional basis (the person having complied with any requirements imposed under Pt 2 (regs 8-19) of those Regulations (freedom to provide services on a temporary basis) in connection with the provision by the person of services as a farrier): Farriers' (Registration) Act 1975 s 7(6) (as so substituted). Where the council receives a document from a person under the European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781, reg 11 or 12 and it appears to the council that the document was sent or produced to the council for the purposes of establishing that the person is entitled to the benefit of reg 8 in connection with the provision by the person of services as a farrier on a temporary and occasional basis, but that the person is not entitled under the Farriers' (Registration) Act 1975 s 7(6) to be registered in Part V of the register, the council must, as soon as may be reasonably practicable after it comes to be of that view, notify the person that the council is of that view: s 7(7) (as so substituted).

The council must discharge its functions in relation to a person registered under s 7(1)(f) or (6) in accordance with European Parliament and Council Directive 2005/36 (OJ L255, 30.9.2005, p 22) on the recognition of professional qualifications as it applies to the profession of farrier: Farriers' (Registration) Act 1975 s 7(8) (as so substituted).

For the purpose of head (1), the Company must make its register available to the council and permit the council to make copies of it and to take extracts from it: s 8 (as so substituted).

As to the recognition by way of a certificate of the professional experience in farriery of nationals of other member states see the European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781, reg 28.

6 By the council's Disciplinary Committee, as to which see the Farriers (Registration) Act 1975 s 14, Sch 3; and note 16.

7 le by reason of the operation of the European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781, reg 17(1).

8 See the Farriers (Registration) Act 1975 s 15(1), (2), (6), (7) (s 15(1) amended by SI 2008/656). There is a right of appeal against the removal of a person's name from the register under the Farriers' (Registration) Act 1975 s 15: see s 15(3)-(6).

9 The offence is not committed when farriery is carried out by apprentices while serving under approved articles of apprenticeship, by trainees at an approved institution, by veterinary surgeons or veterinary practitioners, by trainee veterinary surgeons (when supervised), or by those rendering first-aid in an emergency: see the Farriers (Registration) Act 1975 s 16(1) proviso. As to veterinary surgeons and veterinary practitioners see PARAS 1133-1134.

10 Except for a person whose name has been removed from the register but who has not been notified of this, a person who has applied for registration and not had his application finally determined, and a person who is entitled to be, but is not, registered under s 7(6): Farriers (Registration) Act 1975 ss 15A(1) proviso, 16(2) (s 15A added by the Farriers (Registration) (Amendment) Act 1977 ss 1(1), 2(3) (repealed), Schedule; and amended by SI 2008/646; the Farriers (Registration) Act 1975 s 16(2) amended by the Farriers (Registration) (Amendment) Act 1977 Schedule; and by SI 2008/646).

11 Farriers (Registration) Act 1975 s 16(1)(a). It is also an offence for a person registered in Part III of the register (see note 5) to carry out any farriery by way of trade or for reward: s 16(1)(b).

12 Farriers (Registration) Act 1975 s 15A(1) (as added: see note 10).

13 "Wilfully" means that the act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act goes with it: *R v Senior* [1899] 1 QB 283 at 290-291, CCR, per Lord Russell of Killowen CJ; '... deliberately -- for that is what 'wilfully' means. . .': *Hall v Jordan* [1947] 1 All ER 826 at 827, DC, per Lord Goddard CJ. Cf, in the context of wilful neglect as opposed to a wilful act, *R v Sheppard* [1981] AC 394, [1980] 3 All ER 899, HL.

14 Farriers (Registration) Act 1975 s 5.

15 Farriers (Registration) Act 1975 ss 5, 15A(2), 16(3) (s 15A as added: see note 10; all amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 738 note 1.

16 See the Farriers (Registration) Act 1975 s 1.

17 See the Farriers (Registration) Act 1975 s 2, Sch 1 (Sch 1 amended by SI 1991/1997). This includes the appointment of a registrar: Farriers (Registration) Act 1975 Sch 1 para 10.

18 See the Farriers (Registration) Act 1975 s 4 (amended by SI 2008/646). References in the Farriers (Registration) Act 1975 to 'prescribed' mean prescribed by rules drawn up by the council: s 18.

19 See the Farriers (Registration) Act 1975 s 9 (substituted by SI 2008/646).

20 See the Farriers (Registration) Act 1975 s 10 (amended by the Farriers (Registration) (Amendment) Act 1977 Schedule; and SI 2008/646).

21 See the Farriers (Registration) Act 1975 s 11 (amended by the Farriers (Registration) (Amendment) Act 1977 Schedule).

22 See the Farriers (Registration) Act 1975 s 12.

23 See the Farriers (Registration) Act 1975 s 13, Sch 2.

24 See the Farriers (Registration) Act 1975 s 14, Sch 3 (Sch 3 amended by the Farriers (Registration) (Amendment) Act 1977 Schedule; the Supreme Court Act 1981 s 152(1), Sch 5; the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 38; and, as from a day to be appointed, the Constitutional Reform Act 2005 s

59(5), Sch 11 Pt 1 para 1(2); at the date at which this volume states the law, no such day had been appointed). The procedure of the Disciplinary Committee is approved by the Farriers Registration Council Disciplinary Committee (Procedure) Rules Approval Instrument 1976, SI 1976/700.

25 See the Farriers (Registration) Act 1975 s 6.

26 See the Farriers (Registration) Act 1975 s 17.

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863 Farriery

NOTE 17--Farriers (Registration) Act 1975 Sch 1 further amended: SI 2008/948.

NOTE 24--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (4) MISCELLANEOUS PROVISIONS RELATING TO THE PROTECTION OF ANIMALS/864. Poisoned grain and bait.

864. Poisoned grain and bait.

It is an offence to sell or offer or expose for sale or give away, or cause or procure or knowingly be a party to such sale, offer or exposure for sale or giving away, any grain or seed which has been rendered poisonous except for bona fide use in agriculture¹.

It is a further offence knowingly to put or place, or cause or procure or knowingly be a party to the putting or placing in or upon any land or building any poison, or any fluid or edible matter (not being sown seed or grain) which has been rendered poisonous². Subject to any regulations made by the Secretary of State to prohibit or restrict the use of any cruel poison to destroy any mammal or any mammal of a particular description³, it is in this latter case a defence that the poison was placed by the accused for the purpose of destroying insects and other invertebrates, rats, mice or other small ground vermin, where such is found to be necessary in the interests of public health, agriculture, or the preservation of other animals, domestic or wild, or for the purpose of manuring the land, provided that he took all reasonable precautions to prevent injury to dogs, cats, fowls or other domestic animals and wild birds⁴. It is also a defence to show that the act was done under the authority of a licence and that any conditions specified in the licence were complied with⁵.

A person is not guilty of any of these offences by reason only that he uses poisonous gas in any hole, burrow or earth for the purpose of killing rabbits, hares and other rodents, deer, foxes or moles, or places there a substance which, by evaporation or in contact with moisture, generates poisonous gas⁶.

The penalty on summary conviction for any of the above offences is a fine not exceeding level 4 on the standard scale⁷.

There is nothing to prevent the use of non-poisonous substances as the bait for traps for animals. Should the bait be of such a nature and so near a boundary as to attract animals which would not otherwise be likely to have entered the land, the occupier, or whoever set the bait or caused it to be set, may be liable for the value of the animals destroyed⁸, and it is probable that even if he has acted merely in defence of his property he may be liable to criminal prosecution for possessing articles with intent to damage or destroy⁹.

It is an offence to put or cause to be put at any time any poison or poisonous ingredient on ground, whether open or inclosed, where game usually resort, or in any highway, with intent to destroy or injure game¹⁰, and an offender is liable on conviction before two justices to a penalty not exceeding level 1 on the standard scale¹¹.

Orders may be made¹², applying either to the whole of Great Britain¹³ or to any specified area, specifying poisons for use for the purpose of destroying grey squirrels or coypus and the manner of their use for that purpose, and the use of such poisons in compliance with such an order does not render the user liable to prosecution under the provisions protecting animals¹⁴ and birds¹⁵ from the use of poisons¹⁶. An order has been made permitting, in certain circumstances, the use of warfarin against grey squirrels¹⁷.

1 Protection of Animals Act 1911 s 8(a). The use of poisoned, poisonous or stupefying substances for certain defined purposes may, however, be licensed under the Wildlife and Countryside Act 1981 s 16 and the Protection of Badgers Act 1992 s 10: see text and note 5.

2 Protection of Animals Act 1911 s 8(b). It is a defence to show that the act was done for the purpose of destroying grey squirrels or coypus in compliance with an order permitting the use of a specified poison against those animals: Agriculture (Miscellaneous Provisions) Act 1972 s 19(1), (2). As to such orders see text and notes 12-17. For other offences relating to poisoning etc see PARA 1018.

3 The regulations are made by statutory instrument under the Animals (Cruel Poisons) Act 1962 s 2, where the Secretary of State is satisfied that a poison cannot be used for destroying animals (defined by s 3 as mammals) or animals of any description without causing undue suffering and that other suitable methods of destroying them exist and are or would in certain circumstances be adequate. Contravention of the regulations is punishable on summary conviction by a fine not exceeding level 3 on the standard scale or imprisonment for a term not exceeding three months, or both: s 1(b) (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 738 note 1. As from a day to be appointed, the maximum term of imprisonment is increased to 51 weeks: see the Animals (Cruel Poisons) Act 1962 s 1(b) (prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 17). At the date at which this volume states the law, no such day had been appointed.

The Animals (Cruel Poisons) Regulations 1963, SI 1963/1278, made under this power, ban such use of yellow phosphorous and red squill in all cases, and such use of strychnine except for destroying moles.

Where the use of any poison for the purpose of destroying any animal has been prohibited or restricted by such regulations, the fact that the poison was used as mentioned in the Protection of Animals Act 1911 s 8 proviso is not a defence in proceedings under s 8(b) if the poison was used in contravention of the regulations: Animals (Cruel Poisons) Act 1962 s 1(a).

As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

4 Protection of Animals Act 1911 s 8 proviso (substituted by the Protection of Animals (Amendment) Act 1927 s 1).

5 Protection of Badgers Act 1992 s 10(10) (in respect of a licence granted under s 10(2)(a) to kill or take badgers within a specified area and by specified means in order to prevent the spread of disease); Wildlife and Countryside Act 1981 s 16(7) (in respect of a licence granted under s 16(1) or (3) for the purposes therein mentioned): see PARAS 1006, 988, 1019.

6 Prevention of Damage by Rabbits Act 1939 s 4; Agriculture Act 1947 s 98(3): see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1021. As to rabbit holes see PARA 1022 note 3.

7 Protection of Animals Act 1911 s 8 (amended by the Criminal Justice Act 1982 ss 39(2), 46, Sch 3).

8 See *Townsend v Wathen* (1808) 9 East 277.

9 See under the Criminal Damage Act 1971 s 3: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 338. In view of the strictly limited rights to damage or destroy in defence of property set out in that Act the decisions under the Malicious Damage Act 1861 s 41 of *Daniel v Janes* (1877) 2 CPD 351, and *Bryan v Eaton* (1875) 40 JP 213, do not seem in point.

10 This provision applies only to game as defined in the Game Act 1831 s 2 (see PARA 717), and not to rabbits.

11 See the Game Act 1831 s 3 (amended by the Statute Law Revision (No 2) Act 1888; and the Statute Law (Repeals) Act 1989; and by virtue of the Criminal Justice Act 1982 ss 38, 46).

12 Such an order may make different provisions in relation to grey squirrels and in relation to coypus: Agriculture (Miscellaneous Provisions) Act 1972 s 19(4). Consultation with representative parties must precede the making of the order, and a draft must be laid before and approved by a resolution of each House of Parliament: see s 19(3).

13 As to the meaning of 'Great Britain' see PARA 830 note 21.

14 See the Protection of Animals Act 1911 s 8(b); and text and note 2.

15 See the Wildlife and Countryside Act 1981 s 5(1)(a); and PARA 1000 text and note 3.

16 Agriculture (Miscellaneous Provisions) Act 1972 s 19(1), (2), (5).

17 Grey Squirrels (Warfarin) Order 1973, SI 1973/744.

UPDATE

817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (4) MISCELLANEOUS PROVISIONS RELATING TO THE PROTECTION OF ANIMALS/865. Spreading of myxomatosis.

865. Spreading of myxomatosis.

Any person who knowingly¹ uses or permits the use of a rabbit infected with myxomatosis to spread the disease among uninfected rabbits is guilty of an offence and on summary conviction is liable to a fine not exceeding level 3 on the standard scale². This provision does not render unlawful any procedure duly authorised under the Animals (Scientific Procedures) Act 1986³.

¹ As to the meaning of 'knowingly' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 8.

² Pests Act 1954 s 12 (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 738 note 1.

³ Pests Act 1954 s 12 proviso (amended by the Animals (Scientific Procedures) Act 1986 s 27(2), Sch 3 para 4). As to such experiments see PARAS 875-899.

UPDATE

817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (5) LIVESTOCK/866. Welfare of farm animals.

(5) LIVESTOCK

866. Welfare of farm animals.

Detailed provision is made by regulation imposing duties on the keepers of farmed animals¹, to ensure the welfare of animals under their care, and that a person responsible for a farmed animal takes all reasonable steps to ensure that the conditions under which it is bred or kept comply with those laid down in the regulations². Additional duties are imposed on the keepers of (1) poultry³; (2) more than 350 laying hens⁴; (3) calves confined for rearing and fattening⁵; (4) cattle⁶; (5) pigs⁷; and (6) rabbits⁸.

Keepers must have access to, and be acquainted with, all relevant codes of practice for the welfare of the animals being kept⁹.

Contravention of these provisions, or failing to comply with a duty under them is an offence, as is making an entry in a record, or giving any information for the purposes of the regulations which a person knows to be false in any material particular or, for those purposes, recklessly making a statement or giving any information which is false in any material particular, or causing or permitting any of the above¹⁰.

It is also an offence, in relation to the metropolitan police district, to cause mischief done by cattle through negligence or ill-treatment in driving the cattle, or to misbehave in the driving, care or management of such cattle, or, not being employed to drive such cattle, wantonly and unlawfully to pelt, drive or hunt such cattle¹¹.

Provision is made as to the welfare of animals, including farmed animals, in transit¹², and as to procedures permitted to be performed on animals, including farmed animals¹³.

1 See the Welfare of Farmed Animals (England) Regulations 2007, SI 2007/2078. Those regulations are made under the Animal Welfare Act 2006 s 12 (see PARA 833). 'Farmed animal' means an animal bred or kept for the production of food, wool or skin or other farming purposes, but not including (1) a fish, reptile or amphibian; (2) an animal whilst at, or solely intended for use in, a competition, show or cultural or sporting event or activity; (3) an experimental or laboratory animal; or (4) an animal living in the wild: Welfare of Farmed Animals (England) Regulations 2007, SI 2007/2078, reg 3(2).

For provision in Wales equivalent to that described in the text and notes, see the Welfare of Farmed Animals (Wales) Regulations 2007, SI 2007/3070.

2 See the Welfare of Farmed Animals (England) Regulations 2007, SI 2007/2078, reg 4. Rules are set down concerning staffing; inspection; record keeping; freedom of movement for the animals; buildings and accommodation; animals not kept in buildings; automatic or mechanical equipment; feed, water and other substances; breeding procedures; and electrical immobilisations: see Sch 1. See *R (on the application of Compassion in World Farming Ltd) v Secretary of State for the Environment, Food and Rural Affairs* [2004] EWCA Civ 1009, (2004) Times, 9 August (chickens persistently hungry for part of immature lives; no violation of former regulations).

3 See the Welfare of Farmed Animals (England) Regulations 2007, SI 2007/2078, reg 5(1)(a), which provides that a person responsible for poultry (other than those kept in the systems referred to in Schs 2-4: see note 4) kept in a building must ensure they are kept on, or have access at all times to, well-maintained litter or a well-drained area for resting.

4 See the Welfare of Farmed Animals (England) Regulations 2007, SI 2007/2078, reg 5(1)(b), Schs 2-5. Rules are set down as to keeping hens in non-cage systems (Sch 2), conventional cages (Sch 3) or enriched cages (Sch 4), and there are rules as to dimension, lighting, sound etc common to all three (Sch 5). See also, for provisions as to breeding flocks and hatcheries, PARA 1111. As to the requirement that the Secretary of State and the Welsh Ministers create and maintain a register of establishments keeping 350 or more laying hens see

the Registration of Establishments (Laying Hens) (England) Regulations 2003, SI 2003/3100; and the Registration of Establishments (Laying Hens) (Wales) Regulations 2004, SI 2004/1432.

5 See the Welfare of Farmed Animals (England) Regulations 2007, SI 2007/2078, reg 5(1)(c). Rules are set down concerning accommodation; inspection; tethering; artificially lit buildings; cleaning and disinfection; floors; bedding and lying areas; bovine colostrum; diet; muzzling; feeding; and drinking water: Sch 6.

6 See the Welfare of Farmed Animals (England) Regulations 2007, SI 2007/2078, reg 5(1)(d). Rules are set down concerning bedding and lying areas for lactating cows; and arrangements in respect of cows which are calving: Sch 7.

7 See the Welfare of Farmed Animals (England) Regulations 2007, SI 2007/2078, reg 5(1)(e). Rules are set down concerning inspection; tethering; accommodation; artificially lit buildings; prevention of fighting; cleaning and disinfection; bedding; floors; feeding; drinking water; environmental enrichment; prohibition of the sweat-box system; and noise levels: Sch 8 Pt 2. Further particular rules apply to boars (Sch 8 Pt 3), sows and gilts (Sch 8 Pt 4), piglets (Sch 8 Pt 5), and weaners and rearing pigs (Sch 8 Pt 6).

8 See the Welfare of Farmed Animals (England) Regulations 2007, SI 2007/2078, reg 5(1)(f). Rules are set down concerning the size of hutches; and shelter: Sch 9.

9 See the Welfare of Farmed Animals (England) Regulations 2007, SI 2007/2078, reg 6(1). 'Relevant code of practice' means a code of practice issued under the Animal Welfare Act 2006 s 14 (see PARA 822) or a statutory welfare code issued under the Agriculture (Miscellaneous Provisions) Act 1968 s 3 (repealed) relating to the particular species of farmed animal to which a person is attending: Welfare of Farmed Animals (England) Regulations 2007, SI 2007/2078, reg 6(2). As to savings for codes of practice issued under the Agriculture (Miscellaneous Provisions) Act 1968 s 3 see the Animal Welfare Act 2006 (Commencement No 2 and Saving and Transitional Provisions) (England) Order 2007, SI 2007/2711, art 3; and the Animal Welfare Act 2006 (Commencement No 2 and Saving and Transitional Provisions) (Wales) Order 2007, SI 2007/3065, art 3.

10 See the Welfare of Farmed Animals (England) Regulations 2007, SI 2007/2078, reg 7. As to prosecutions see reg 8. A person guilty of an offence under reg 7 is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, a fine not exceeding level 4 on the standard scale, or both: reg 9(1). In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (in force as from a day to be appointed), the reference to 51 weeks must be taken as a reference to six months: Welfare of Farmed Animals (England) Regulations 2007, SI 2007/2078, reg 9(2). At the date at which this volume states the law, no such day had been appointed.

11 Metropolitan Police Act 1839 s 54 para 3 (amended by virtue of the Criminal Justice Act 1982 s 46). The offence is punishable on summary conviction with a fine not exceeding level 2 on the standard scale. As to the standard scale see PARA 738 note 1.

12 See PARA 868 et seq.

13 As to permitted procedures in relation to cattle, pigs, birds, sheep, goats, horses and deer see the Mutilations (Permitted Procedures) (England) Regulations, SI 2007/1100; and the Mutilations (Permitted Procedures) (Wales) Regulations, SI 2007/1029; and PARA 827 note 7. As to prohibited procedures see the Animal Welfare Act 2006 s 5; and PARA 827.

UPDATE

817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

866 Welfare of farm animals

NOTE 13--SI 2007/1029 amended: SI 2008/3094.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/(6) FUR FARMING/867. Prohibition on fur farming.

(6) FUR FARMING

867. Prohibition on fur farming.

A person is guilty of an offence if (1) he keeps animals solely or primarily for slaughter, whether by himself or another, for the value of their fur, or for breeding progeny for such slaughter¹; or (2) he knowingly causes or permits another person to keep animals for such purposes². A person guilty of such an offence is liable on summary conviction to a fine not exceeding £20,000³.

If a person is convicted of an offence under head (1) above in respect of animals of a particular description, the court may make a forfeiture order⁴ in respect of any animals of that description which are kept by that person when the order is made or which come into his keeping during the relevant period⁵. If a person is convicted of an offence under head (2) above in respect of animals of a particular description kept by another person, the court may make a forfeiture order in respect of any animals of that description which are kept by that other person when the order is made or which come into his keeping during the relevant period⁶. The court may make a forfeiture order whether or not it also deals with the offender in respect of the offence in any other way⁷. Where the court proposes to make a forfeiture order, and a person claiming to have an interest in the animals concerned applies to be heard by the court, the court may not make the order unless that person has been given an opportunity to show cause why the order ought not to be made⁸.

A forfeiture order operates in relation to the forfeiture of animals so as to deprive any person of his rights in those animals⁹. Any person claiming to have an interest in the animals concerned may appeal against a forfeiture order to the Crown Court¹⁰. Where the court makes a forfeiture order, it may (a) appoint a person to carry out the order; (b) impose requirements on any person in relation to the keeping of the animals concerned pending their destruction or other disposal; (c) order the offender to pay such sum¹¹ as the court may determine in respect of the reasonable expenses of carrying out the order and, where he does not keep the animals himself, of keeping them pending their destruction or other disposal; and (d) make such provision as the court considers appropriate in relation to the operation of the order pending the making or determination of any appeal or application relevant to the order¹².

A person authorised in writing by the appropriate authority¹³, whether generally or in a particular case, may at any reasonable time enter any premises¹⁴ on which he has reasonable grounds for suspecting that an offence has been or is being committed and may inspect the premises and any animals or things found there¹⁵. A person appointed by the court under head (a) above may at any reasonable time enter any premises on which he has reasonable grounds for suspecting that animals to which the order applies are being kept, and carry out the order¹⁶. A person seeking to enter any premises in the exercise of his powers must, if required by or on behalf of the owner or occupier or person in charge of the premises, produce evidence of his identity, and of his authority or, as the case may be, appointment, before entering¹⁷, and, having entered any premises in the exercise of his powers, must, if so required, state in writing his reasons for entering¹⁸. A person is guilty of an offence if he intentionally obstructs or delays any person in the exercise of his powers under the above provisions¹⁹.

Provision is made for the making of payments by the appropriate authority to persons in respect of income and non-income losses²⁰ incurred by them as a result of ceasing, by reason of the enactment or coming into force of these provisions, to carry on their businesses so far as they consist of prohibited activities²¹.

1 Fur Farming (Prohibition) Act 2000 s 1(1). References to keeping animals for slaughter, or for breeding progeny for slaughter, include keeping or breeding them for sale for slaughter: s 1(3).

2 Fur Farming (Prohibition) Act 2000 s 1(2).

3 Fur Farming (Prohibition) Act 2000 s 1(4).

4 'Forfeiture order' means an order for the forfeiture and destruction or other disposal of the animals to which the order applies, including any subsequent progeny of those animals: Fur Farming (Prohibition) Act 2000 s 2(3).

5 Fur Farming (Prohibition) Act 2000 s 2(1). 'Relevant period' means the period beginning with the making of the forfeiture order and ending with the destruction or other disposal of the animals in pursuance of the order: s 2(6).

6 Fur Farming (Prohibition) Act 2000 s 2(2).

7 Fur Farming (Prohibition) Act 2000 s 2(4).

8 Fur Farming (Prohibition) Act 2000 s 2(5).

9 Fur Farming (Prohibition) Act 2000 s 3(1).

10 Fur Farming (Prohibition) Act 2000 s 3(2).

11 Such a sum is treated for the purposes of enforcement as if it were a fine imposed on conviction: Fur Farming (Prohibition) Act 2000 s 3(4).

12 Fur Farming (Prohibition) Act 2000 s 3(3).

13 Ie the Secretary of State or the Welsh Ministers: see the Fur Farming (Prohibition) Act 2000 s 6 (amended by SI 2002/794); Government of Wales Act 2006 s s 162(1), Sch 11 para 30. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

14 'Premises' includes any place but not any private dwelling; and 'private dwelling' means any premises for the time being used as a private dwelling excluding any garage, outhouse or other structure, whether forming part of the same building as the premises, which belongs to or is usually enjoyed with the premises: Fur Farming (Prohibition) Act 2000 s 4(7).

15 Fur Farming (Prohibition) Act 2000 s 4(1).

16 Fur Farming (Prohibition) Act 2000 s 4(2).

17 Fur Farming (Prohibition) Act 2000 s 4(3).

18 Fur Farming (Prohibition) Act 2000 s 4(4).

19 Fur Farming (Prohibition) Act 2000 s 4(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 4(6). As to the standard scale see PARA 738 note 1.

20 'Income losses' means losses of income, and 'non-income losses' means losses other than income losses: Fur Farming (Prohibition) Act 2000 s 5(8).

21 See the Fur Farming (Prohibition) Act 2000 s 5(1), (7) (s 5(1) amended by SI 2002/794). Substantive provisions of the Fur Farming (Compensation Scheme) (England) Order 2002, SI 2002/221, made under these provisions, were declared unlawful in *R (on the application of Kelsall) v Secretary of State for the Environment, Food and Rural Affairs* [2003] EWHC 459 (Admin), [2003] All ER (D) 186 (Mar); in his second judgment in those proceedings, at [2003] EWHC 656 (Admin) at PARA [180], Stanley Burnton J quashed the Order in its entirety. See now the Fur Farming (Compensation Scheme) (England) Order 2004, SI 2004/1964. At the date at which this volume states the law, no equivalent provision had been made applying to Wales. As to the provisions to be covered by a compensation scheme see the Fur Farming (Prohibition) Act 2000 s 5(2), (3). Before making any such scheme, the appropriate authority must consult such persons as appear to it to be likely to be entitled to payments under such a scheme and such organisations as appear to it to represent such persons: s 5(4). As to the extent of the duty to consult see *R (on the application of Kelsall) v Secretary of State for the Environment,*

Food and Rural Affairs [2003] EWHC 459 (Admin), [2003] All ER (D) 186 (Mar). As to the ultimate resolution of disputes by the Lands Tribunal see the Fur Farming (Prohibition) Act 2000 s 5(5), (6).

UPDATE

817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

867 Prohibition on fur farming

TEXT AND NOTES--See also Cat and Dog Fur (Control of Import, Export and Placing on the Market) Regulations 2008, SI 2008/2795 (**AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1005A).

NOTE 21--Reference to the Lands Tribunal is now to the Upper Tribunal: Fur Farming (Prohibition) Act 2000 s 5(6) (amended by SI 2009/1307). SI 2004/1964 amended: SI 2009/1307.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/(7) TRANSPORT/868. Transport of animals and prevention of suffering.

(7) TRANSPORT

868. Transport of animals and prevention of suffering.

The Secretary of State or the Welsh Ministers¹ may make orders prohibiting the conveyance of animals by any specified vessel or aircraft to or from any port or aerodrome² in the United Kingdom, or by any specified vehicle through the Channel Tunnel system³. They may also make orders to protect animals from unnecessary suffering during inland transit, or while exposed for sale or while awaiting removal after being exposed for sale⁴, and to ensure proper ventilation for animals carried by sea or by air, and to protect them from unnecessary suffering during the passage and on landing⁵.

Under these powers (or partially thereunder) orders have been made regulating the welfare of animals during transport generally, including staging points⁶, the movement of horses⁷, the import⁸ of animals, and the welfare of animals at markets⁹.

Railway undertakings must ensure that animals are properly supplied with water and food at such railway stations as the Secretary of State directs¹⁰, and must supply water or food on the request¹¹ of the consignor or the person in charge¹² of the animals¹³. The consignor or person in charge is guilty of an offence if he fails to request water, and in consequence the animal goes without water for 24 hours¹⁴. The consignor and consignee may be charged for the expense of supplying water and food¹⁵.

The Secretary of State or the Welsh Ministers may make such orders¹⁶ as they think fit for ensuring for animals a proper supply of food and water for any period in which the animals are detained; and during their passage by sea or by air and on landing¹⁷.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 'Aerodrome' means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft: Animal Health Act 1981 s 89(1).

3 Animal Health Act 1981 s 9 (amended by SI 1990/2371). Such orders are not noted in this work. References to 'vessel', 'boat' or 'ship' etc, include hovercraft: see s 90; and the Hovercraft (Application of Enactments) Order 1972, SI 1972/971.

4 Animal Health Act 1981 s 37(1)(a); this includes inland air transit. Section 37 is repealed, as from a day to be appointed, by the Animal Welfare Act 2006 s 65, Sch 4. At the date at which this volume states the law, no such day had been appointed.

5 Animal Health Act 1981 s 37(2) (prospectively repealed: see note 4).

6 See the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260; and the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047; the Transport of Animals (Cleansing and Disinfection) (England) (No 3) Order 2003, SI 2003/1724 (amended by SI 2006/3260; and SI 2007/1020); and the Transport of Animals (Cleansing and Disinfection) (Wales) (No 3) Order 2003, SI 2003/1968 (amended by SI 2007/1047; SI 2008/789; SI 2008/789). See PARA 869.

7 See the Export of Horses (Protection) Order 1969, SI 1969/1784; and the Welfare of Horses at Markets (and Other Places of Sale) Order 1990, SI 1990/2627.

8 See the Importation of Animals Order 1977, SI 1977/944 (amended by SI 1990/2371; SI 1992/1361; SI 1992/3159; SI 1995/2922; SI 1996/1760; SI 2000/1618; SI 2000/1673; and SI 2001/2662).

9 See the Welfare of Animals at Markets Order 1990, SI 1990/2628 (amended by SI 1993/3085; and SI 1995/12); and the Welfare of Horses at Markets (and Other Places of Sale) Order 1990, SI 1990/2627.

10 Animal Health Act 1981 s 38(2) (amended by the London Regional Transport Act 1984 s 71(3)(a), Sch 6 para 23; and by SI 2003/1615). The Animal Health Act 1981 s 38 is repealed, as from a day to be appointed, by the Animal Welfare Act 2006 Sch 4. At the date at which this volume states the law, no such day had been appointed.

11 Even when no such request is made, it will be implied if it becomes reasonably necessary that the animals should be fed during transit, and it is the duty of the carrier to supply such food: *Great Southern and Western Rly Co v Hourigan* (1910) 44 ILT 86.

12 Cf *North Staffordshire Rly Co v Waters* (1913) 110 LT 237, DC.

13 Animal Health Act 1981 s 38(2), Sch 4 para 1 (s 38(2) prospectively repealed: see note 10).

14 Animal Health Act 1981 Sch 4 para 2. The period may be varied, but not so as to make it less than 12 hours: Sch 4 para 3. As to the penalties for offences against the Act see PARA 1101.

15 See the Animal Health Act 1981 Sch 4 paras 4-6.

16 See the Export of Horses (Protection) Order 1969, SI 1969/1784; the Welfare of Horses at Markets (and Other Places of Sale) Order 1990, SI 1990/2627; the Welfare of Animals at Markets Order 1990, SI 1990/2628 (amended by SI 1993/3085; and SI 1995/12); the Foot-and-Mouth Disease (England) Order 2006, SI 2006/182; Foot-and-Mouth Disease (Wales) Order 2006, SI 2006/179; the Avian Influenza and Influenza of Avian Origin in Mammals (England) (No 2) Order 2006, SI 2006/2702; the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) Order 2006, SI 2006/1762; the Avian Influenza (H5N1 in Poultry) (England) Order 2006, SI 2006/3247; the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006, SI 2006/3309; the Avian Influenza (H5N1 in Wild Birds) (England) Order 2006, SI 2006/3249; the Avian Influenza (H5N1 in Wild Birds) (Wales) Order 2006, SI 2006/3310; the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260; and the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047.

17 Animal Health Act 1981 s 38(1) (prospectively repealed: see note 10).

UPDATE

817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

868 Transport of animals and prevention of suffering

NOTE 8--SI 1977/944 further amended: SI 2009/2713 (England).

NOTE 16--SI 2006/182, SI 2006/2702 amended: SI 2009/2713.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/(7) TRANSPORT/869. Welfare of animals in transit.

869. Welfare of animals in transit.

An order has been made to make provision for the protection of animals during transport¹. Under that order it is an offence to transport any animal in a way which causes, or is likely to cause, injury or unnecessary suffering to that animal². It is also an offence to transport any animal except in such receptacles or means of transport, under conditions (in particular with regard to space, ventilation, temperature and security) and with such supply of liquid and oxygen, as are appropriate for the species concerned³.

Failure to comply with specified provisions of the Community legislation on the transport of animals⁴ is an offence against the Animal Health Act 1981⁵; and, in particular, a transporter who fails to comply with certain Community provisions⁶ is guilty of an offence against the Act⁷. Specific provision is made as to compliance with Community provisions by masters of roll-on-roll-off vessels⁸, organisers⁹, keepers¹⁰ and assembly centres¹¹. The order also enforces the requirements of Community legislation¹² in relation to control posts¹³.

Provision is made for derogations relating to means of transport by road used in respect of journeys not exceeding 12 hours in order to reach the final destination¹⁴. For the purposes of the inspection and approval requirements¹⁵, such a means of transport by road used to transport animals other than domestic equidae or domestic animals of bovine, ovine, caprine or porcine species does not require a certificate of approval¹⁶. For the purposes of the requirement of the continuous access to water¹⁷, during a journey pigs do not require continuous access to water on a means of transport by road but must be offered water at appropriate intervals and afforded an adequate opportunity to drink¹⁸. For the purposes of the insulated roof requirement¹⁹, the roof on a means of transport by road does not require insulation²⁰. Derogation from the temperature requirement²¹ is permitted in specified circumstances²², as is derogation from the ventilation system requirement²³. The temperature monitoring, data recording and warning systems specified in the Community legislation²⁴ are not required on a means of transport by road²⁵; nor is the specified navigation system²⁶ required²⁷.

Provision is also made for the amendment, suspension or revocation of approvals, authorisations or certificates and for representations against a notice to amend, suspend or revoke them²⁸. Inspectors are given powers to require compliance with the order, including the power to stop a journey²⁹. Owners and charterers of vessels used to transport animals are required to produce information on demand to an officer of the Secretary of State or the Welsh Ministers³⁰, which may include a plan of the vessel³¹.

Obstruction by failure to give assistance or information, or by giving false or misleading information, or causing or permitting such obstruction, is prohibited³², and offences by bodies corporate are specifically dealt with³³. The order is enforceable by local authorities³⁴. Breach of the order is an offence under the Animal Health Act 1981³⁵.

1 See the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, which makes provision in England for the administration and enforcement of EC Council Regulation 1/2005 (OJ L3, 5.1.2005, p 1) on the protection of animals during transport and related operations. Corresponding provision is made in relation to Wales by the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047. See also EC Council Decision 2004/544 (OJ L241, 13.7.2004, p 21) on the signing of the European Convention for the Protection of Animals during International Transport.

The orders cover all transport of animals (being most vertebrates and cold-blooded invertebrates: see the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 4; and the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 4.

See *Air India v Wiggins* [1980] 2 All ER 593, [1980] 1 WLR 815, HL, which decided that the Transit of Animals (General) Order 1973, SI 1973/1377 (revoked), covered transport within Great Britain and those carried on a vessel or aircraft to or from a port or airport in Great Britain, whether or not they are unloaded. See also *British Airways Board v Wiggins* [1977] 3 All ER 1068, [1977] 1 WLR 1150, DC, stating that carriers and other persons in charge of animals during their carriage are placed under a general duty to ensure that the statutory provisions are applied to those animals.

2 Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 4(1); Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 4(1). Article 4 applies to the transport of cold-blooded invertebrate animals, and to the transport of vertebrate animals except those to which EC Council Regulation 1/2005 (OJ L3, 5.1.2005, p 1) applies: Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 4(3), (4); Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 4(3), (4). See also *Cheshire County Council v Helliwell & Sons (Bolton) Ltd (in liquidation)* (1990) 155 JP 425, (1990) Times, 6 December, DC; *Ken Lane Transport Ltd v North Yorkshire County Council* [1995] 1 WLR 1416, DC.

3 Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 4(2); Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 4(2). See also *British Airways Board v Wiggins* [1977] 3 All ER 1068, [1977] 1 WLR 1150, DC.

4 I.e EC Council Regulation 1/2005 (OJ L3, 5.1.2005, p 1) art 3 (general conditions for the transport of animals); art 4(1) (art 4 relates to transport documentation); art 5(1) (art 5 relates to planning obligations for the transport of animals); art 6(1) (art 6 relates to transporters); from 5 January 2008, art 6(5); art 7 (prior inspection and approval of means of transport); Annex I Ch III point 1.8, 1.9 or 1.11 (Ch III relates to transport practices).

5 Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 5(1); Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 5(1). As to offences against the Animal Health Act 1981 see PARA 1100. In addition, no person may remove, deface, obliterate or alter a mark made under EC Council Regulation 1/2005 (OJ L3, 5.1.2005, p 1) art 24(3) (powers of inspectors): Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 5(2); Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 5(2). Copies of the documentation referred to in EC Council Regulation 1/2005 (OJ L3, 5.1.2005, p 1) art 4 must be kept for six months from the completion of the journey: Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 5(3); Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 5(3).

6 I.e EC Council Regulation 1/2005 (OJ L3, 5.1.2005, p 1) art 4(2) (art 4 relates to transport documentation); art 5(2), (4) (art 5 relates to planning obligations for the transport of animals); art 6(2)-(4), (6), (8) (art 6 relates to transporters); art 6(9) for means of transport by road in service for the first time on or after 5 January 2007, and for all means of transport by road on or after 1 January 2009; art 12 (limitation on applications for authorisation).

7 Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 6; Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 6.

8 See the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 7; and the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 7 (compliance with EC Council Regulation 1/2005 (OJ L3, 5.1.2005, p 1) Annex I Ch II point 3.1).

9 See the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 8; and the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 8 (compliance with EC Council Regulation 1/2005 (OJ L3, 5.1.2005, p 1) art 5(3), (4)).

10 See the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 9; and the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 9 (compliance with EC Council Regulation 1/2005 (OJ L3, 5.1.2005, p 1) art 8).

11 See the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 10; and the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 10 (compliance with EC Council Regulation 1/2005 (OJ L3, 5.1.2005, p 1) art 9).

12 I.e EC Council Regulation 1255/97 (OJ L174, 2.7.97, p 1) concerning Community criteria for staging points.

13 See the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 11; and the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 11. It is an offence for a person to operate a control post unless he is approved for that purpose: Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 11(1); Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 11(1). It is an offence for any person to operate or use a control post unless it is approved in accordance with EC Council Regulation 1255/97 (OJ L174, 2.7.97, p 1) art 3(1); and an operator of a control post who fails to comply with any of arts 4 (use of control posts), 5 (operation of control posts), and 6(1) (confirmation that an animal is fit to

continue its journey) is guilty of an offence against the Animal Health Act 1981: Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 11(2), (3); Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 11(2), (3).

14 See the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, Pt 3 (arts 12-19); and the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, Pt 3 (arts 12-19). In accordance with EC Council Regulation 1/2005 (OJ L3, 5.1.2005, p 1) art 18(4), the derogations apply in respect of a means of transport by road used for a journey that does not exceed 12 hours in order to reach the final place of destination ('means of transport by road'): Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 12; Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 12.

15 Ie EC Council Regulation 1/2005 (OJ L3, 5.1.2005, p 1) art 18(1).

16 Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 13; Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 13.

17 Ie EC Council Regulation 1/2005 (OJ L3, 5.1.2005, p 1) Annex I Ch V point 1.4(b).

18 Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 14; Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 14.

19 Ie EC Council Regulation 1/2005 (OJ L3, 5.1.2005, p 1) Annex I Ch VI point 1.1.

20 Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 15; Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 15.

21 Ie EC Council Regulation 1/2005 (OJ L3, 5.1.2005, p 1) Annex I Ch VI point 3.1.

22 Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 16; Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 16.

23 Ie EC Council Regulation 1/2005 (OJ L3, 5.1.2005, p 1) Annex I Ch VI point 3.2: see the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 17; Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 17.

24 Ie EC Council Regulation 1/2005 (OJ L3, 5.1.2005, p 1) Annex I Ch VI points 3.3, 3.4.

25 Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 18; Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 18.

26 Ie the system referred to in EC Council Regulation 1/2005 (OJ L3, 5.1.2005, p 1) Annex I Ch VI point 4.1.

27 Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 19; Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 19.

28 See the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, Pt 4 (arts 20-23); and the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, Pt 4 (arts 20-23). The competent authority is specified in art 20. The requirements as to approvals, authorisations and certificates are set out in art 21, and provision as to suspension, amendment and revocation is made by art 22, and for the making of written representations against a refusal, condition, amendment, suspension or revocation of an approval, authorisation or certificate by art 23 of each order.

29 See the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, arts 24, 25; and the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, arts 24, 25.

30 As to the Secretary of State see PARA 705; and as to the Welsh Ministers see PARA 706.

31 See the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 26; and the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 26.

32 See the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 27; and the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 27.

33 See the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 28; and the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 28.

34 See the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 29(1); and the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 29(1). As to the meaning of 'local authority' see PARA

1121. However, the Secretary of State or the Welsh ministers, as appropriate, may direct, in relation to cases of a particular description or a particular case, that any duty imposed on a local authority under this provision is to be discharged by the Secretary of State or the Welsh Ministers and not the local authority: Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260, art 29(2); Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047, art 29(2).

35 See the Animal Health Act 1981 s 73; and PARA 1100. As to the penalties see s 75; and PARA 1101.

UPDATE

817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/(7) TRANSPORT/870. Cleansing and disinfection.

870. Cleansing and disinfection.

Specific provision is made for the cleansing and disinfection of means of transport (and equipment relating thereto) of animals¹.

After the transport of any hoofed animals other than horses, racing pigeons and specified domestic birds, the means of transport and associated equipment must be cleansed and disinfected before it is used again to transport those animals². In addition, the means of transport must be cleansed and disinfected again before those animals are transported if the means of transport has become soiled so as to cause a risk of transmission of disease³. A means of transport must be cleansed and disinfected as soon as reasonably practicable after a journey, but in any event within not more than 24 hours⁴. Any person transporting, or causing or permitting the transport of, horses must ensure that they are loaded on to a means of transport which has been cleansed and, where necessary, disinfected, and that any horses that die during transport, and any soiled litter and excreta are removed as soon as practicable⁵.

Nothing in these provisions requires the disinfection of drivers' cabs⁶.

Feedingstuffs to which animals have had access, bedding, excreta and other material of animal origin, and other contaminants removed from the means of transport, must generally be destroyed, treated so as to remove the risk of transmission of disease, or disposed of so that animals have no access to it⁷.

Special provisions apply where a means of transport has been used to transport any relevant animal to a slaughterhouse or to a sale premises and it is to leave the slaughterhouse or sale premises not carrying any animals and without having been cleansed and disinfected⁸.

Where an inspector is satisfied that these provisions have not been complied with, or that a means of transport needs to be cleansed and disinfected, he may serve a notice prohibiting the use of that means of transport or the keeping of animals on it, or requiring cleansing and disinfection to be carried out or materials to be disposed of⁹.

The local authority is responsible for enforcing these provisions¹⁰, and breach of them is an offence under the Animal Health Act 1981¹¹.

1 See the Transport of Animals (Cleansing and Disinfection) (England) (No 3) Order 2003, SI 2003/1724 (amended by SI 2006/3260; and SI 2007/1020). In relation to Wales see the Transport of Animals (Cleansing and Disinfection) (Wales) (No 3) Order 2003, SI 2003/1968 (amended by SI 2007/1047; SI 2008/789). These orders implement (in part) EC Council Directive 91/628 (OJ L340, 11.12.91, p 17) on the protection of animals during transport (amended by EC Council Decision 92/438; and EC Council Directive 95/29).

2 Transport of Animals (Cleansing and Disinfection) (England) (No 3) Order 2003, SI 2003/1724, art 3(1), (3), (4), Sch 2. Article 3 does not apply in specified circumstances, ie journeys made within a single farming enterprise, journeys between the same two points, journeys to and from livestock shows, and temporary unloading: see art 3(1A), Sch 1A (added by SI 2007/1020). In relation to Wales see the Transport of Animals (Cleansing and Disinfection) (Wales) (No 3) Order 2003, SI 2003/1968, art 3(1), (3), (4), Sch 2. Article 3 does not apply in specified circumstances, ie journeys made within a single farming enterprise, journeys between the same two points, journeys to and from livestock shows, and temporary unloading: see art 3(1A), Sch 1A (added by SI 2008/789).

3 Transport of Animals (Cleansing and Disinfection) (England) (No 3) Order 2003, SI 2003/1724, art 3(5), Sch 2 paras 1, 3, 4; Transport of Animals (Cleansing and Disinfection) (Wales) (No 3) Order 2003, SI 2003/1968, art 3(5), Sch 2 paras 1, 3, 4.

4 Transport of Animals (Cleansing and Disinfection) (England) (No 3) Order 2003, SI 2003/1724, art 3(3); Transport of Animals (Cleansing and Disinfection) (Wales) (No 3) Order 2003, SI 2003/1968, art 3(3).

5 Transport of Animals (Cleansing and Disinfection) (England) (No 3) Order 2003, SI 2003/1724, art 5(1). No person may use, or cause or permit the use of, any means of transport to transport any animal to which art 3 applies unless the means of transport and any equipment have been cleansed and disinfected in accordance with Sch 2 since they were last used to transport a horse: art 5(2). Cleansing and disinfection under art 5 must be carried out in accordance with Sch 2 paras 1, 3, 4: art 5(4). The same applies in Wales: see the Transport of Animals (Cleansing and Disinfection) (Wales) (No 3) Order 2003, SI 2003/1968, art 5 (amended by SI 2007/1047).

6 Transport of Animals (Cleansing and Disinfection) (England) (No 3) Order 2003, SI 2003/1724, art 6; Transport of Animals (Cleansing and Disinfection) (Wales) (No 3) Order 2003, SI 2003/1968, art 6.

7 See the Transport of Animals (Cleansing and Disinfection) (England) (No 3) Order 2003, SI 2003/1724, art 7(1); Transport of Animals (Cleansing and Disinfection) (Wales) (No 3) Order 2003, SI 2003/1968, art 7(1). This does not apply to any material required to be disposed of under the Animal By-Products Regulations 2003, SI 2003/1482: Transport of Animals (Cleansing and Disinfection) (England) (No 3) Order 2003, SI 2003/1724, art 7(2); Transport of Animals (Cleansing and Disinfection) (Wales) (No 3) Order 2003, SI 2003/1968, art 7(2).

8 See the Transport of Animals (Cleansing and Disinfection) (England) (No 3) Order 2003, SI 2003/1724, art 8; Transport of Animals (Cleansing and Disinfection) (Wales) (No 3) Order 2003, SI 2003/1968, art 8.

9 See the Transport of Animals (Cleansing and Disinfection) (England) (No 3) Order 2003, SI 2003/1724, art 9; Transport of Animals (Cleansing and Disinfection) (Wales) (No 3) Order 2003, SI 2003/1968, art 9.

10 Transport of Animals (Cleansing and Disinfection) (England) (No 3) Order 2003, SI 2003/1724, art 10(1); Transport of Animals (Cleansing and Disinfection) (Wales) (No 3) Order 2003, SI 2003/1968, art 10(1). As to the meaning of 'local authority' see PARA 1121. However, the Secretary of State or the Welsh Ministers as appropriate may direct, in relation to cases of a particular description or any particular case, that such an enforcement duty imposed on a local authority is to be discharged by the Secretary of State or the Welsh Ministers and not by the local authority: Transport of Animals (Cleansing and Disinfection) (England) (No 3) Order 2003, SI 2003/1724, art 10(2); Transport of Animals (Cleansing and Disinfection) (Wales) (No 3) Order 2003, SI 2003/1968, art 10(2). As to the Secretary of State see PARA 705; and as to the Welsh Ministers see PARA 706.

11 See the Animal Health Act 1981 s 73; and PARA 1100. As to the penalties see s 75; and PARA 1101.

UPDATE

817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/(7) TRANSPORT/871. Markets and animal gatherings.

871. Markets and animal gatherings.

Restrictions are imposed on the holding of animal gatherings¹, prescribing (1) the licensing of premises used for animal gatherings²; (2) minimum intervals between the holding of an animal gathering and the next such gathering in the same place³; (3) the time limit for an animal gathering for the purpose of a sale⁴; (4) specific requirements in relation to dedicated slaughter sales and dedicated slaughter collections⁵; (5) duties on persons at an animal gathering⁶; and (6) restrictions following an animal gathering⁷.

Contravention of these provisions is an offence against the Animal Health Act 1981⁸.

Detailed provision is made for the treatment, handling and welfare of animals at markets and other places of sale generally⁹, and specifically in relation to horses¹⁰.

1 See the Animal Gatherings (England) Order 2006, SI 2006/2211; and the Animal Gatherings (Wales) Order 2004, SI 2004/1803, which do not apply if the gathering is held by the occupier of the premises and all the animals are owned by that person and come from the same authorised premises: Animal Gatherings (England) Order 2006, SI 2006/2211, art 4; Animal Gatherings (Wales) Order 2004, SI 2004/1803, art 4. 'Animal gathering' means an occasion at which animals are brought together for one or more of the following purposes: (1) a sale, show or exhibition; (2) onward consignment within Great Britain; (3) inspection to confirm the animals possess specific breed characteristics: Animal Gatherings (England) Order 2006, SI 2006/2211, art 2; Animal Gatherings (Wales) Order 2004, SI 2004/1803, art 2. As to the meaning of 'Great Britain' see PARA 830 note 21.

2 See the Animal Gatherings (England) Order 2006, SI 2006/2211, art 5; and the Animal Gatherings (Wales) Order 2004, SI 2004/1803, art 5.

3 See the Animal Gatherings (England) Order 2006, SI 2006/2211, art 6; and the Animal Gatherings (Wales) Order 2004, SI 2004/1803, art 6. There are exemptions for premises with a paved animal area which is cleansed and disinfected as prescribed, and for sheep autumn breeding sales: see the Animal Gatherings (England) Order 2006, SI 2006/2211, arts 7, 8; and the Animal Gatherings (Wales) Order 2004, SI 2004/1803, arts 7, 8.

4 See the Animal Gatherings (England) Order 2006, SI 2006/2211, art 9; and the Animal Gatherings (Wales) Order 2004, SI 2004/1803, art 9. The starting time may in certain circumstances be changed on advance notice: see the Animal Gatherings (England) Order 2006, SI 2006/2211, art 10; and the Animal Gatherings (Wales) Order 2004, SI 2004/1803, art 10.

5 See the Animal Gatherings (England) Order 2006, SI 2006/2211, art 11; and the Animal Gatherings (Wales) Order 2004, SI 2004/1803, art 11.

6 See the Animal Gatherings (England) Order 2006, SI 2006/2211, art 12, Schedule; and the Animal Gatherings (Wales) Order 2004, SI 2004/1803, art 12.

7 See the Animal Gatherings (England) Order 2006, SI 2006/2211, art 13; and the Animal Gatherings (Wales) Order 2004, SI 2004/1803, art 13.

8 See the Animal Health Act 1981 s 73; and PARA 1100. As to the penalties see s 75; and PARA 1101. As to enforcement see the Animal Gatherings (England) Order 2006, SI 2006/2211, art 14; and the Animal Gatherings (Wales) Order 2004, SI 2004/1803, art 14.

9 See the Welfare of Animals at Markets Order 1990, SI 1990/2628 (amended by SI 1993/3085; and SI 1995/12), which, inter alia, prohibits exposing for sale unfit animals or animals likely to give birth; makes provision for the protection of lambs and kids; and generally prohibits the causing of injury or unnecessary suffering to an animal. Contravention of the order is an offence against the Animal Health Act 1981 (see note 8). As to cleansing and disinfection requirements in respect of the transport of animals to livestock shows see PARA 870.

10 See the Welfare of Horses at Markets (and Other Places of Sale) Order 1990, 1990/2627, which, inter alia, prohibits exposing for sale unfit horses or mares likely to give birth; and the sale of foals separate from their

dams; and generally prohibits the causing of injury or unnecessary suffering to horses. Contravention of the order is an offence against the Animal Health Act 1981 (see note 8). See also PARA 870.

UPDATE

817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

871 Markets and animal gatherings

TEXT AND NOTES 1-8--SI 2006/2211 replaced: Animal Gatherings Order 2010, SI 2010/460. The exemption from the time limit for an animal gathering for the purpose of a sheep autumn breeding sale is not replicated, and a requirement for a licensee to ensure that feedings stuffs and other materials are destroyed, treated or disposed of is added.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (8) SLAUGHTER OF ANIMALS/872. Slaughter generally.

(8) SLAUGHTER OF ANIMALS

872. Slaughter generally.

The welfare of animals which are to be slaughtered, the methods of slaughter, the conditions for slaughter and killing, and the conditions and requirements to be observed in slaughterhouses and knackers' yards are the subject of detailed regulation which is considered elsewhere in this work¹.

The use of slaughter as a means to control or prevent the spread of disease, and the payment of compensation when such slaughter is carried out, are considered subsequently in this title².

1 See **FOOD** vol 18(2) (Reissue) PARA 470 et seq. As to the export of animals for slaughter to other member states see Case C-5/94 *R v Ministry of Agriculture, Fisheries and Food, ex p Hedley Lomas (Ireland) Ltd* [1997] QB 139, [1996] All ER (EC) 493, [1996] ECR I-2553, ECJ.

2 See PARAS 1062 et seq, 1089-1094, 1108.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (9) PERFORMANCES AND PUBLIC EXHIBITIONS/873. Performing animals.

(9) PERFORMANCES AND PUBLIC EXHIBITIONS

873. Performing animals.

A person who exhibits¹ or trains² any performing animal³ must be registered with a local authority⁴. These provisions do not apply to the training of animals for bona fide military, police, agricultural or sporting purposes, or the exhibition of any animals so trained⁵. A non-registered person who exhibits or trains a performing animal⁶ or who applies to be registered when disqualified⁷, a registered person who exhibits or trains a performing animal with respect to which or in a manner with respect to which he is not registered⁸, or who without reasonable excuse fails to produce his certificate of registration on demand⁹, or a person who in any part of Great Britain contravenes or fails to comply with an order made by a magistrates' court under the Performing Animals (Regulation) Act 1925¹⁰, or who obstructs or wilfully delays any constable or local authority officer in the execution of his powers of entry or inspection under the Act¹¹, or who conceals any animal with a view to avoiding such inspection¹², commits an offence punishable on summary conviction with a fine not exceeding level 3 on the standard scale¹³.

Proceedings in respect of contravention of the Performing Animals (Regulation) Act 1925 can only be taken by a constable or local authority officer¹⁴, who are empowered to enter any premises at all reasonable times where performing animals are being trained, exhibited or kept, to inspect the premises and the animals, and to require any trainer or exhibitor to produce his certificate of registration¹⁵. They are not, however, entitled to go on or behind the stage during a public performance of performing animals¹⁶.

Upon conviction of any offence against the Performing Animals (Regulation) Act 1925, the Protection of Animals Act 1911¹⁷ or specified provisions of the Animal Welfare Act 2006¹⁸, a person may, if registered, have his name removed from the register, and in any case be either permanently or for a specified time disqualified for being registered¹⁹. Where it is proved to the satisfaction of a magistrates' court that the training or exhibition of a performing animal has been accompanied by cruelty and should be prohibited or allowed only subject to conditions, an order may be made prohibiting the training or exhibition or allowing it only upon conditions²⁰. The court must send a copy of any order to the local authority and to the Secretary of State, and particulars of it must be indorsed on any certificate of registration²¹.

A person aggrieved²² by the making or refusal of any order may appeal to the Crown Court²³. Any order made does not come into force until seven days after it is made, or until any appeal has been determined²⁴.

1 To 'exhibit' means to exhibit at any entertainment to which the public are admitted, whether on payment of money or otherwise: Performing Animals (Regulation) Act 1925 s 5(1).

2 To 'train' means to train for the purpose of any exhibition at any entertainment to which the public are admitted, whether on payment of money or otherwise: Performing Animals (Regulation) Act 1925 s 5(1).

3 'Animal' for this purpose does not include invertebrates: Performing Animals (Regulation) Act 1925 s 5(1). As to vertebrates see PARA 875 note 2.

4 Performing Animals (Regulation) Act 1925 s 1(1). Application for registration, containing prescribed particulars of the animals and the performances, must be made to the local authority for the district where the applicant resides or, if he has no fixed residence in Great Britain, to such one as he may choose of certain

prescribed authorities, paying a registration fee: ss 1(2), (3), 5(3) (s 1(2) amended by the Local Government Act 1974 ss 35, 42(1), Sch 6 para 2(2), Sch 8; and the Performing Animals (Regulation) Act 1925 s 5(3) amended by the Local Government Act 1985 s 16, Sch 8 para 17); Performing Animals Rules 1925, SR & O 1925/1219, rr 1, 2, 9 (amended by SI 1968/1464), Sch 1, made under the Performing Animals (Regulation) Act 1925 s 5(2). A certificate of registration is issued and a copy sent by the local authority to the Secretary of State: s 1(4), (7); Performing Animals Rules 1925, SR & O 1925/1219, rr 5, 8, Sch 3. The registers are open to inspection, for which a fee may be charged: Performing Animals (Regulation) Act 1925 s 1(5), (7), (8) (amended by the Local Government Act 1974 Sch 6 para 2(1)); Performing Animals Rules 1925, SR & O 1925/1219, rr 3, 4, 8, Sch 2. Particulars may be varied on application, and if they are so altered, a new certificate must be issued: Performing Animals (Regulation) Act 1925 s 1(6); Performing Animals Rules 1925, SR & O 1925/1219, r 6. As to the meaning of 'Great Britain' see PARA 830 note 21. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

'Local authority' means the Common Council in the City of London, the London borough council in a London borough, and elsewhere the county council: Performing Animals (Regulation) Act 1925 s 5(1) (amended by the Local Government Act 1985 Sch 8 para 17); see generally **LOCAL GOVERNMENT** vol 69 (2009) PARA 1 et seq; **LONDON GOVERNMENT**. The expenses of a county council are defrayed out of the county fund: Performing Animals (Regulation) Act 1925 s 5(3) (as so amended).

- 5 Performing Animals (Regulation) Act 1925 s 7.
- 6 Performing Animals (Regulation) Act 1925 s 4(1)(a).
- 7 Performing Animals (Regulation) Act 1925 s 4(1)(g); see text and notes 17-18.
- 8 Performing Animals (Regulation) Act 1925 s 4(1)(b).
- 9 Performing Animals (Regulation) Act 1925 s 4(1)(f).
- 10 Performing Animals (Regulation) Act 1925 s 4(1)(c). As to orders see s 2; text and notes 19-23.
- 11 Performing Animals (Regulation) Act 1925 s 4(1)(d). As to powers of entry see s 3; text and notes 14-16. As to 'obstructing' and 'wilfully' see PARA 938 note 18.
- 12 Performing Animals (Regulation) Act 1925 s 4(1)(e).
- 13 Performing Animals (Regulation) Act 1925 s 4(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 738 note 1.
- 14 See the Performing Animals (Regulation) Act 1925 ss 2(1), 4(1).
- 15 Performing Animals (Regulation) Act 1925 s 3(1).
- 16 Performing Animals (Regulation) Act 1925 s 3(2).
- 17 As to the Protection of Animals Act 1911 see PARAS 818, 864, 1021.
- 18 In any of the Animal Welfare Act 2006 ss 4, 5, 6(1), (2), 7-9, 11. See PARAS 826-831, 832.
- 19 Performing Animals (Regulation) Act 1925 s 4(2) (amended by the Animal Welfare Act 2006 s 64, Sch 3 para 1).
- 20 Performing Animals (Regulation) Act 1925 s 2(1).
- 21 Performing Animals (Regulation) Act 1925 ss 2(4), 4(2).
- 22 As to the meaning of 'person aggrieved' see **JUDICIAL REVIEW**.
- 23 Performing Animals (Regulation) Act 1925 ss 2(2), 4 (2) (s 2(2) amended by the Courts Act 1971 s 56(2), Sch 9 Pt I).
- 24 Performing Animals (Regulation) Act 1925 ss 2(3), 4(2).

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (9) PERFORMANCES AND PUBLIC EXHIBITIONS/874. Films and videos involving animal cruelty.

874. Films and videos involving animal cruelty.

No person may exhibit to the public or supply to any person for public exhibition¹, whether by himself or another person, any cinematograph film, whether produced in Great Britain² or elsewhere, if in connection with its production any scene represented in it was organised or directed in such a way as to involve the cruel infliction of pain or terror on any animal³ or the cruel goading of any animal to fury⁴. Any person contravening this provision is liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding three months, or both⁵. In any proceedings the court may, without prejudice to any other mode of proof, infer from the film as exhibited or supplied for exhibition that a scene represented was organised or directed in such a way but, whether it draws such an inference or not, it is a defence for the defendant to prove that he believed and had reasonable cause to believe that no scene represented was so organised or directed⁶.

It is an offence to supply or offer to supply an unclassified video work which to any significant extent depicts the mutilation or torture of, or other acts of gross violence towards animals⁷.

1 A film is deemed to be exhibited to the public when, and only when, it is exhibited in a place to which for the time being members of the general public as such have access, whether on payment of money or otherwise, and 'public exhibition' is construed accordingly: Cinematograph Films (Animals) Act 1937 s 1(4)(a).

2 As to the meaning of 'Great Britain' see PARA 830 note 21.

3 'Animal' means a 'protected animal' within the meaning of the Animal Welfare Act 2006 (see PARA 817 note 23): Cinematograph Films (Animals) Act 1937 s 1(4)(b) (substituted by the Animal Welfare Act 2006 s 64, Sch 3 para 2).

4 Cinematograph Films (Animals) Act 1937 s 1(1).

5 Cinematograph Films (Animals) Act 1937 s 1(3) (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 738 note 1. As from a day to be appointed, the maximum term of imprisonment is increased to 51 weeks: see the Cinematograph Films (Animals) Act 1937 s 1(3) (prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 9). At the date at which this volume states the law, no such day had been appointed.

6 Cinematograph Films (Animals) Act 1937 s 1(2). As to the burden of proof see PARA 998 note 9.

7 See the Video Recordings Act 1984 ss 2(2)(b), 9(1); and **LICENSING AND GAMBLING** vol 67 (2008) PARAS 276-277, 284.

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(10) SCIENTIFIC PROCEDURES AND MEDICINAL TESTS

(i) Scientific Procedures

875. Protection of living animals.

Authority for, and the conduct and regulation of, experiments or other scientific procedures on living animals is provided by the Animals (Scientific Procedures) Act 1986. A protected animal under that Act is any living¹ vertebrate² other than man³, but such protection extends to any such vertebrate in its foetal, larval or embryonic form from the stage of its development when (1) in the case of a mammal, bird or reptile, half the gestation or incubation period for its species has elapsed; and (2) in any other case, it becomes capable of independent feeding⁴.

¹ An animal is regarded as continuing to live until the permanent cessation of circulation or the destruction of its brain: Animals (Scientific Procedures) Act 1986 s 1(4).

² 'Vertebrate' means any animal of the Sub-phylum Vertebrata of the Phylum Chordata, and 'invertebrate' means any animal not of that Sub-phylum: Animals (Scientific Procedures) Act 1986 s 1(5).

³ Animals (Scientific Procedures) Act 1986 s 1(1). The Secretary of State may by order extend the definition so as to include invertebrates of any description: s 1(3)(a). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

⁴ Animals (Scientific Procedures) Act 1986 s 1(2). The Secretary of State may by order alter the stage of development so specified: s 1(3)(b). He may also make provision in lieu of s 1(2) as respects any animal which becomes a protected animal by virtue of an order under s 1(3)(a) (see note 3): s 1(3)(c). Under this power, the Animals (Scientific Procedures) Act (Amendment) Order 1993, SI 1993/2103, has been made, adding *Octopus vulgaris* to the list of protected animals.

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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876. Regulated procedures.

A regulated procedure is any experimental or other scientific procedure applied to a protected animal¹ which may have the effect of causing it pain, suffering, distress or lasting harm². The definition does not cover anything done in accordance with any recognised veterinary, agricultural or animal husbandry practice³. It does, however, apply where what is done is part of a series or combination of such procedures, whether the same or different, applied to the same animal and the series or combination may have the same effect, and the animal is a protected animal throughout or it attains the status of a protected animal in its development in the course of the series or combination of procedures⁴.

Anything done for the purpose of, or liable to result in, the birth or hatching of a protected animal is also a regulated procedure if it may cause the animal pain, suffering, distress or lasting harm⁵.

Also excluded from the definition of regulated procedure is the ringing, tagging or marking of an animal or the application of any other humane procedure for the sole purpose of enabling it to be identified if it causes only momentary pain or distress and no lasting harm⁶. Nor is the killing of an animal within the definition unless it is killed for experimental or other scientific use in a designated establishment⁷ and the method used is not appropriate to the animal⁸.

The administration of any substance or article to an animal for research purposes in accordance with an animal test certificate granted under the Veterinary Medicines Regulations 2006⁹ is not within the definition¹⁰.

1 As to the meaning of 'protected animal' see PARA 875.

2 Animals (Scientific Procedures) Act 1986 s 2(1). In determining whether pain, suffering, distress or lasting harm may be caused, the use of anaesthetics, analgesics, decerebration and any other method of rendering an animal insentient must be disregarded: s 2(4). A use of such means for the purposes of any experimental or other scientific procedure is itself a regulated procedure: s 2(4).

3 Animals (Scientific Procedures) Act 1986 s 2(8).

4 Animals (Scientific Procedures) Act 1986 s 2(2).

5 Animals (Scientific Procedures) Act 1986 s 2(3).

6 Animals (Scientific Procedures) Act 1986 s 2(5). Such exception would clearly apply to the method of identification by tattooing, tagging or the implantation of a microchip.

7 As to designated establishments see the Animals (Scientific Procedures) Act 1986 ss 6, 7; and PARA 880.

8 Animals (Scientific Procedures) Act 1986 s 2(7). 'Appropriate' means appropriate under Sch 1 (substituted by SI 1996/3278), which prescribes the appropriate methods of humane killing for (1) animals other than foetal, larval and embryonic forms; and (2) foetal, larval and embryonic forms. See also the code of practice cited in PARA 895 note 4.

9 Ie under the Veterinary Medicines Regulations 2007, SI 2007/2539: see **MEDICINAL PRODUCTS AND DRUGS**.

10 Animals (Scientific Procedures) Act 1986 s 2(6) (substituted by SI 2006/2407).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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877. Prohibition of unlicensed procedures.

No person may apply a regulated procedure¹ to an animal unless (1) he holds a personal licence² qualifying him to apply a regulated procedure of that description to an animal of that description; (2) the procedure is applied as part of a programme of work specified in a project licence³ authorising the application, as part of that programme, of a regulated procedure of that description to an animal of that description; and (3) the place where the procedure is carried out is a place⁴ specified in both the personal licence and the project licence⁵.

Contravention of these provisions is an offence, punishable on conviction on indictment with imprisonment for a term not exceeding two years or a fine or both, and on summary conviction with imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both⁶.

1 As to the meaning of 'regulated procedure' see PARA 876.

2 As to the meaning of 'personal licence' see PARA 878.

3 As to the meaning of 'project licence' see PARA 879.

4 As to the meaning of 'place' see PARA 878 note 2.

5 Animals (Scientific Procedures) Act 1986 s 3. A person is not guilty of an offence under this provision of acting without the authority of a project licence if he shows that he reasonably believed, after making due inquiry, that he had such authority: s 22(4). Nor, if the conditions of his licence permit him to use assistants to perform, under his direction, tasks not requiring technical knowledge, is anything done by an assistant in accordance with such a condition an offence: s 10(4).

6 Animals (Scientific Procedures) Act 1986 s 22(1). The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32: see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58(b)); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. As to the prescribed sum see PARA 739 note 3.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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878. Personal licences.

A personal licence is one granted by the Secretary of State qualifying the holder to apply specified regulated procedures¹ to animals of specified descriptions at a specified place² or places³.

Applications for personal licences must be made to the Secretary of State in such form and supported by such information as he may reasonably require⁴. Except where the Secretary of State dispenses with such requirements, any such application must be endorsed by a person who is himself the holder of a personal licence or a licence treated under the Animals (Scientific Procedures) Act 1986 as such a licence⁵ and who has knowledge of the biological or other relevant qualifications and the training, experience and character of the applicant⁶. The person endorsing such an application should, if practicable, be a person occupying a position of authority at a place where the applicant is to be authorised by the licence to carry out the specified procedures⁷.

Further, the Secretary of State must not grant a licence to a person unless he is satisfied that that person has appropriate education and training (including instruction in a relevant scientific discipline) for the purpose of applying the regulated procedures to be specified in the licence, and is competent to apply those procedures in accordance with the conditions included in the licence and to handle and take care of laboratory animals⁸.

No one under the age of 18 may be granted a licence⁹.

A personal licence continues in force until revoked, but the Secretary of State must review each such licence at intervals not exceeding five years and may for that purpose reasonably require information from the holder¹⁰.

Provision has been made for the appropriate conditions to be contained in a personal licence and for the variation, revocation and suspension of the licence¹¹.

1 As to the meaning of 'regulated procedure' see PARA 876.

2 'Place' includes any place within the seaward limits of the territorial waters of the United Kingdom, including any vessel other than a ship which is not a British ship: Animals (Scientific Procedures) Act 1986 s 30(2).

3 Animals (Scientific Procedures) Act 1986 s 4(1). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

4 Animals (Scientific Procedures) Act 1986 s 4(2). As to false or misleading statements in an application as an offence see s 23(1); and PARA 896.

5 Ie under the transitional procedures of the Animals (Scientific Procedures) Act 1986 s 27(4), Sch 4, which provided for the continuation under the Act of authorisations, licences etc granted under the Cruelty to Animals Act 1876 (repealed).

6 Animals (Scientific Procedures) Act 1986 s 4(3).

7 Animals (Scientific Procedures) Act 1986 s 4(3).

8 Animals (Scientific Procedures) Act 1986 s 4(4A) (added by SI 1998/1974).

9 Animals (Scientific Procedures) Act 1986 s 4(4).

10 Animals (Scientific Procedures) Act 1986 s 4(5).

11 See the Animals (Scientific Procedures) Act 1986 ss 9-13; and PARAS 883-887.

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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879. Project licences.

A project licence is a licence granted by the Secretary of State¹ specifying a programme of work and authorising the application, as part of that programme, of specified regulated procedures² to animals of specified descriptions at a specified place³ or places⁴. Such a licence must only be granted to a person who undertakes overall responsibility for the programme⁵. It must not be granted unless the Secretary of State is satisfied that the programme is undertaken for one or more of the following purposes: (1) the prevention (whether by the testing of any product or otherwise) or the diagnosis or treatment of disease, ill-health or abnormality, or their effects, in man, animals or plants; (2) the assessment, detection, regulation or modification of physiological conditions in man, animals or plants; (3) the protection of the natural environment in the interests of the health or welfare of man or animals; (4) the advancement of knowledge in biological or behavioural sciences; (5) education or training otherwise than in primary or secondary schools; (6) forensic inquiries; (7) the breeding of animals for experimental or other scientific use⁶.

In determining whether and on what terms to grant a project licence, the Secretary of State must weigh the likely adverse effect on the animals concerned against the benefit likely to accrue from the specified programme⁷. He may not grant a licence unless he is satisfied that the purpose of the programme specified in the licence cannot be achieved satisfactorily by any other reasonably practicable method not entailing the use of protected animals, and the regulated procedures to be used are those which use the minimum number of animals, involve animals with the lowest degree of neurophysiological sensitivity, cause the least pain, suffering, distress or lasting harm, and are most likely to produce satisfactory results⁸.

Furthermore, the Secretary of State may not grant a project licence authorising the use of cats, dogs, primates or equidae unless he is satisfied that animals of no other species are suitable for the purposes of the programme or that it is not practicable to obtain animals of any other suitable species⁹.

There are provisions relating to the conditions to be contained in a project licence and to its variation, revocation and suspension¹⁰.

Unless revoked, a licence continues in force for the period specified in it, and it may be renewed for further periods, up to a maximum of five years since its grant, without prejudice to the grant of a new licence in respect of the programme in question¹¹. A licence terminates on the death of the holder¹².

Any holder of a project licence who (a) procures or knowingly permits a person under his control to carry out a regulated procedure other than as part of the programme specified, or (b) procures or knowingly permits such a person to carry out a regulated procedure other than in accordance with that person's personal licence¹³, is guilty of an offence¹⁴.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 As to the meaning of 'regulated procedure' see PARA 876.

3 As to the meaning of 'place' see PARA 878 note 2.

4 Animals (Scientific Procedures) Act 1986 s 5(1). As to false or misleading statements in an application as an offence see s 23(1); and PARA 896.

- 5 Animals (Scientific Procedures) Act 1986 s 5(2).
- 6 Animals (Scientific Procedures) Act 1986 s 5(3).
- 7 Animals (Scientific Procedures) Act 1986 s 5(4). 'Adverse effect' means 'lasting harm' within the meaning of s 2(1); death is not classed as lasting harm, and therefore the death of an animal used in a regulated procedure for scientific experimentation is not an adverse effect and does not need to be taken into account when deciding whether to grant a licence for such experiments: *R (on the application of the British Union for the Abolition of Vivisection) v Secretary of State for the Home Department* [2007] EWHC 1964 (Admin), [2007] All ER (D) 452 (Jul), (2007) Times, 27 August.
- 8 Animals (Scientific Procedures) Act 1986 s 5(5) (substituted by SI 1998/1974).
- 9 Animals (Scientific Procedures) Act 1986 s 5(6).
- 10 See the Animals (Scientific Procedures) Act 1986 ss 9-13; and PARAS 883-887.
- 11 Animals (Scientific Procedures) Act 1986 s 5(7).
- 12 Animals (Scientific Procedures) Act 1986 s 5(8). There are transitional provisions for a programme to continue for up to 28 days after notification of death: s 5(8).
- 13 As to personal licences see PARA 878.
- 14 Animals (Scientific Procedures) Act 1986 s 22(2). The penalties are those prescribed by s 22(1) (see PARA 877 text and note 6): s 22(2).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

879 Project licences

NOTE 7--*British Union for the Abolition of Vivisection*, cited, affirmed: [2008] EWCA Civ 870, [2008] All ER (D) 387 (Jul).

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880. Scientific procedure establishments.

For the purpose of a project licence¹ no place² may be specified unless it is designated by the Secretary of State as a scientific procedure establishment³. Application for a certificate to that effect is made to him in such form and supported by such information as he may reasonably require⁴.

The certificate must not be issued except to a person in a position of authority at the establishment, nor unless the application nominates both a suitable person or persons to be specified in the certificate to be responsible for the day-to-day care of the protected animals⁵ kept there for experimental or other purposes, and a veterinary surgeon or other suitably qualified person to provide advice on their health and welfare⁶.

If it appears to any person so specified in a certificate that the health or welfare of any protected animal gives rise to concern, he must notify the holder of the personal licence⁷ in charge of the animal or, if there is no such person or it is not practicable to notify him, take steps to ensure that the animal is cared for and, if such is necessary, that it is killed by an appropriate⁸ or approved method⁹.

The certificate remains in force until revoked, and there is a prescribed annual fee¹⁰. There are provisions relating to the conditions to be contained in a certificate and to its variation, revocation and suspension¹¹.

1 As to project licences see PARA 879.

2 As to the meaning of 'place' see PARA 878 note 2.

3 Animals (Scientific Procedures) Act 1986 s 6(1). This does not apply if it appears to the Secretary of State that the programme or procedures authorised by the licence require him to specify a different place: s 6(2). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

A person convicted of an offence of cruelty under the Animal Welfare Act 2006 s 4, 5, 6(1), (2), 7 or 8 (see PARAS 826-830) in respect of an animal at a designated establishment is liable to the penalties prescribed by the Animals (Scientific Procedures) Act 1986 s 22(1) (see PARA 877 text and note 6) rather than any penalty by way of imprisonment or fine provided for in the Animal Welfare Act 2006: Animals (Scientific Procedures) Act 1986 s 22(5) (amended by the Animal Welfare Act 2006 s 64, Sch 3 para 12(1)).

4 Animals (Scientific Procedures) Act 1986 s 6(3). As to false or misleading statements in an application as an offence see s 23(1); PARA 896.

5 As to the meaning of 'protected animal' see PARA 875.

6 Animals (Scientific Procedures) Act 1986 s 6(4), (5). If the Secretary of State thinks fit, the same person may be specified under both requirements: s 6(5). As to veterinary surgeons and practitioners see PARAS 1133-1134.

7 As to personal licences see PARA 878.

8 ie appropriate under the Animals (Scientific Procedures) Act 1986 Sch 1; see PARA 876 note 8.

9 Animals (Scientific Procedures) Act 1986 s 6(6). Notification in such event may be given to the person specified in the certificate under either heading (if different) or to one of the inspectors appointed under s 18 (see PARA 893): s 6(7). 'Approved' means approved by the Secretary of State: see s 6(6).

10 Animals (Scientific Procedures) Act 1986 ss 6(8), 8. See the Animals (Scientific Procedures) Act 1986 (Fees) Order 2000, SI 2000/480 (amended by SI 2002/473). Past deficits may be taken into account in the determination of fees: Animals (Scientific Procedures) Act 1986 (Fees) (No 1) Order 1996, SI 1996/3090.

11 See the Animals (Scientific Procedures) Act 1986 ss 9-13; and PARAS 883-887.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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881. Breeding and supplying establishments.

A person must not at any place¹ breed for use in regulated procedures² (whether there or elsewhere) protected animals³ of a specified description⁴ unless that place is designated by the Secretary of State as a breeding establishment⁵.

A person must not keep at any place any such protected animals which have not been bred there but are to be supplied for use elsewhere in regulated procedures, unless that place is designated by the Secretary of State as a supplying establishment⁶.

Application for such certificates of designation is made to the Secretary of State in such form and supported by such information as he may reasonably require⁷. The certificate must not be issued unless the application nominates both a suitable person or persons to be specified in the certificate to be responsible for the day-to-day care of the animals bred or kept there for breeding or, as the case may be, for the purposes of being supplied for use in regulated procedures, and a veterinary surgeon or other suitably qualified person to provide advice on their health and welfare⁸.

If it appears to any person specified in a certificate that the health or welfare of any protected animal gives rise to concern, he must take steps to ensure that it is cared for and, if such is necessary, that it is killed by an appropriate⁹ or approved method¹⁰.

The certificate remains in force until revoked, and there is a prescribed annual fee¹¹. There are provisions relating to the conditions to be contained in a certificate and to its variation, revocation and suspension¹².

1 As to the meaning of 'place' see PARA 878 note 2.

2 As to the meaning of 'regulated procedure' see PARA 876.

3 As to the meaning of 'protected animal' see PARA 875.

4 The following have been specified for these purposes, namely, mice, rats, guinea-pigs, hamsters, rabbits, dogs, cats, primates, quails, ferrets, gerbils and, if genetically modified, pigs and sheep: Animals (Scientific Procedures) Act 1986 s 7(1), Sch 2 (amended by SI 1993/2103; and SI 1998/1674). As to the power of the Secretary of State to amend the Animals (Scientific Procedures) Act 1986 Sch 2 by order see s 7(9). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

5 Animals (Scientific Procedures) Act 1986 s 7(1). As to penalties on conviction of an offence see note 6. The Breeding of Dogs Act 1973 (see PARAS 931-933) does not apply to the breeding of dogs for use in regulated procedures if they are bred at a designated breeding establishment: Animals (Scientific Procedures) Act 1986 s 27(3). As to the code of practice for the housing of animals in such establishments see PARA 895.

6 Animals (Scientific Procedures) Act 1986 s 7(2). Contravention of s 7(1) or (2) is an offence punishable on summary conviction by imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale or both: s 22(3). As to the standard scale see PARA 738 note 1. As from a day to be appointed, the offence is punishable only by a fine not exceeding level 4 on the standard scale: s 22(3) (prospectively amended by the Criminal Justice Act 2003 s 332, Sch 37 Pt 9). At the date at which this volume states the law, no such day had been appointed.

7 Animals (Scientific Procedures) Act 1986 s 7(3). As to false or misleading statements in an application as an offence see s 23(1); PARA 896.

8 Animals (Scientific Procedures) Act 1986 s 7(4), (5). If the Secretary of State thinks fit, the same person may be specified under both requirements: s 7(5). As to veterinary surgeons and practitioners see PARAS 1133-1134.

9 le appropriate under the Animals (Scientific Procedures) Act 1986 Sch 1; see PARA 876 note 8.

10 Animals (Scientific Procedures) Act 1986 s 7(6). Notification in such event may be given to the person specified in the certificate under either heading (if different) or to one of the inspectors appointed under s 18 (see PARA 893): s 7(7). 'Approved' means approved by the Secretary of State: s 7(6).

11 Animals (Scientific Procedures) Act 1986 ss 7(8), 8. See the Animals (Scientific Procedures) Act 1986 (Fees) Order 2000, SI 2000/480 (amended by SI 2002/473). Past deficits may be taken into account in the determination of fees: Animals (Scientific Procedures) Act 1986 (Fees) (No 1) Order 1996, SI 1996/3090.

12 See the Animals (Scientific Procedures) Act 1986 ss 9-13; and PARAS 883-887.

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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882. Consultation.

Before granting a licence or issuing a certificate under the Animals (Scientific Procedures) Act 1986, the Secretary of State must consult one of the inspectors appointed under the Act¹ and may also consult an independent assessor² or the Animals Procedure Committee established under the Act³.

1 He under the Animals (Scientific Procedures) Act 1986 s 18; see PARA 893. As to the Animals Procedure Committee see s 19; and PARA 894. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 Where he proposes to consult an independent assessor the Secretary of State must notify the applicant, and in selecting the assessor he must have regard to any representations made by the applicant: Animals (Scientific Procedures) Act 1986 s 9(2).

3 Animals (Scientific Procedures) Act 1986 s 9(1).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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883. Conditions of licences.

Subject to certain compulsory conditions referred to below, the Secretary of State may impose such conditions in licences and certificates as he thinks fit¹.

A personal licence² must include:

- 90 (1) a condition to the effect that the holder must take precautions to prevent or reduce to the minimum consistent with the purposes of the authorised procedures³ any pain, distress or discomfort to the animals to which those procedures may be applied;
- 91 (2) an inviolable termination condition, that is to say one specifying circumstances in which a protected animal⁴ which is being or has been subjected to a regulated procedure must in every case be immediately killed by a method appropriate to the animal⁵ or by such other method as may be authorised by the licence⁶; and
- 92 (3) without prejudice to head (1) above such conditions as the Secretary of State considers appropriate to ensure that the authorised procedures are carried out in accordance with the following provisions⁷, namely,
 - 1 1. (a) that all experiments are carried out under general or local anaesthesia⁸;
 2. (b) if anaesthesia is not possible, analgesics or other appropriate methods should be used in order to ensure as far as possible that pain, suffering, distress or harm are limited and that in any event the animal is not subject to severe pain, distress or suffering⁹;
 3. (c) provided such action is compatible with the object of the experiment, an anaesthetised animal, which suffers considerable pain once anaesthesia has worn off, must be treated in good time with pain-relieving means or, if this is not possible, must be immediately killed by a humane method¹⁰.

Unless the Secretary of State considers that an exception is justified, a project licence¹¹ must include conditions¹² to the effect that:

- 93 (i) no cat or dog may be used under the licence unless it has been bred at and obtained from a designated breeding establishment¹³;
- 94 (ii) no other protected animal of a specified¹⁴ description may be used under the licence unless it has been bred at a designated breeding establishment or obtained from a designated supplying establishment¹⁵;
- 95 (iii) no vertebrate of an endangered species¹⁶ is to be used under the licence¹⁷; and
- 96 (iv) no protected animal taken from the wild is to be used under the licence¹⁸.

No exception may be made under head (i) or (iv) above unless the Secretary of State is satisfied that no animal suitable for the purpose of the programme specified in the licence can be obtained within the condition; and no exception may be made under head (iii) above unless the Secretary of State is satisfied that the use of animals of the species in question will be in

conformity with the relevant EC Regulation¹⁹ and that the purposes of the programme of work specified in the licence are either research aimed at preservation of the species in question or essential bio-medical purposes²⁰ where the species in question exceptionally proves to be the only one suitable for those purposes²¹.

A project licence must also include:

- 97 (A) a condition requiring the prior consent of the Secretary of State to the setting free of the animal²²;
- 98 (B) a condition appropriate to ensure that where a protected animal has been subjected to a series of regulated procedures for a particular purpose, at the conclusion of the series a veterinary surgeon or, if none is available, another suitably qualified person determines whether the animal should be killed or kept alive²³;
- 99 (C) a condition appropriate to ensure that, if that person considers that it is likely to remain in lasting pain or distress, the animal is killed by a method appropriate to the animal²⁴, or by such other method as may be authorised by the personal licence of the person by whom the animal is killed²⁵; and
- 100 (D) a condition appropriate to ensure that where the animal is to be kept alive, it is kept at a designated establishment²⁶.

Breach of a condition in a licence does not invalidate it but is a ground for variation or revocation²⁷.

1 Animals (Scientific Procedures) Act 1986 s 10(1). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 As to personal licences see PARA 878.

3 Ie authorised regulated procedures; see PARA 876.

4 As to the meaning of 'protected animal' see PARA 875.

5 Ie appropriate under the Animals (Scientific Procedures) Act 1986 Sch 1; see PARA 876 note 8.

6 Animals (Scientific Procedures) Act 1986 s 10(2).

7 Ie in accordance with EC Council Directive 86/609 (OJ L358, 18.12.86, p 1) on the approximation of laws, regulations and administrative provisions of the member states regarding the protection of animals used for experimental and other scientific purposes, art 8: Animals (Scientific Procedures) Act 1986 s 10(2A), Sch 2A (added by SI 1998/1974). EC Council Directive 86/609 art 8 is set out in the Animals (Scientific Procedures) Act 1986 Sch 2A: see text and notes 8-10.

8 EC Council Directive 86/609 (OJ L358, 18.12.86, p 1) art 8(1). This does not apply if anaesthesia is judged to be more traumatic to the animal than the experiment itself, or anaesthesia is incompatible with the object of the experiment, in which case appropriate legislative and/or administrative measures must be taken to ensure that no such experiment is carried out unnecessarily: art 8(2). As to the Directive see note 7.

9 EC Council Directive 86/609 (OJ L358, 18.12.86, p 1) art 8(3). As to the Directive see note 7.

10 EC Council Directive 86/609 (OJ L358, 18.12.86, p 1) art 8(4). As to the Directive see note 7.

11 As to project licences see PARA 879.

12 Animals (Scientific Procedures) Act 1986 s 10(3).

13 Animals (Scientific Procedures) Act 1986 s 10(3)(a). As to the meaning of 'designated breeding establishment' see PARA 881.

14 Ie specified in the Animals (Scientific Procedures) Act 1986 Sch 2; see PARA 881 note 4.

15 Animals (Scientific Procedures) Act 1986 s 10(3)(b). As to supplying establishments see s 7(2); and PARA 881.

16 'Endangered species' means a species listed in specified provisions of the Convention on International Trade in Endangered Species of Fauna and Flora and EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) on the protection of wild flora and fauna by regulating trade therein (see PARA 960 et seq): see the Animals (Scientific Procedures) Act 1986 s 10(3A) (added by SI 1993/2102).

17 Animals (Scientific Procedures) Act 1986 s 10(3)(c) (added by SI 1993/2102).

18 Animals (Scientific Procedures) Act 1986 s 10(3)(d) (added by SI 1998/1974).

19 Ie EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) on the protection of wild flora and fauna by regulating trade therein.

20 'Essential bio-medical purposes' has the same meaning as in EC Council Directive 86/609 (OJ L358, 18.12.86, p 1): Animals (Scientific Procedures) Act 1986 s 10(3A) (as added: see note 16).

21 Animals (Scientific Procedures) Act 1986 s 10(3) (amended by SI 1993/2102).

22 Animals (Scientific Procedures) Act 1986 s 10(3B) (s 10(3B)-(3D) added by SI 1998/1974). The Secretary of State must not give his consent to the setting free of an animal in pursuance of such a condition unless he is satisfied that (1) the maximum possible care has been taken to safeguard the animal's well-being; (2) the animal's state of health allows it to be set free; and (3) the setting free of the animal poses no danger to public health or the environment: Animals (Scientific Procedures) Act 1986 s 10(3C) (as so added). See also Case C-152/00 *EC Commission v France* [2002] ECR I-6973, [2002] All ER (D) 54 (Sep), ECJ; Case C-205/01 *EC Commission v Netherlands* [2003] ECR I-661, [2003] All ER (D) 61 (Jan), ECJ.

23 Animals (Scientific Procedures) Act 1986 s 10(3D)(a) (as added: see note 22). As to veterinary surgeons see PARA 1133.

24 See note 5.

25 Animals (Scientific Procedures) Act 1986 s 10(3D)(b) (as added: see note 22).

26 Animals (Scientific Procedures) Act 1986 s 10(3D)(c) (as added: see note 22), which is expressed to be subject to s 10(6D); see PARA 884 text and note 20. As to designated establishments see PARAS 880-881.

27 Animals (Scientific Procedures) Act 1986 s 10(7).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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884. Conditions of designation certificates.

A certificate designating a scientific procedure establishment¹ must include:

- 101 (1) a condition prohibiting the killing other than by an appropriate method² or one approved by the Secretary of State of any protected animal³ kept at the establishment for experimental or other scientific purposes but not subjected to a regulated procedure⁴ or required⁵ to be killed⁶;
- 102 (2) such conditions as the Secretary of State considers appropriate to ensure that sufficient trained staff are provided at the establishment, and that the persons who take care of protected animals at the establishment and those who supervise such persons have appropriate education and training⁷.

A certificate designating a scientific procedure establishment or a breeding or supplying establishment⁸ must include the following:

- 103 (a) conditions requiring the holder of the certificate:
 - 3
 - 4. (i) to secure that a person competent to kill animals in the manner specified by conditions imposed in accordance with head (1) above will be available to do so⁹; and
 - 5. (ii) to keep records as respects the source and disposal of and otherwise relating to the animals kept at the establishment for experimental or other scientific purposes or, as the case may be, bred or kept for breeding there or kept there for the purposes of being supplied for use in regulated procedures¹⁰;
 - 4
 - 104 (b) if the certificate permits dogs, cats or primates to be kept or bred at the establishment in question, conditions requiring the holder of the certificate to ensure:
 - 5
 - 6. (i) that particulars of the identity and origin of each dog, cat or primate kept or bred at the establishment are entered in the records referred to in head (a)(ii) above¹¹;
 - 7. (ii) that before it is weaned, every dog, cat or primate in the establishment not falling within head (iii) below is provided with an individual identification mark in the least painful manner possible¹²;
 - 8. (iii) that where a dog, cat or primate is transferred from one establishment to another before it is weaned and it is not practicable to mark it beforehand, the records kept by the establishment receiving the animal identify that animal's mother until the animal is provided with an individual identification mark¹³; and
 - 9. (iv) that any unmarked dog, cat or primate which is taken into the establishment after being weaned is provided as soon as possible thereafter with an individual identification mark¹⁴;
 - 6
 - 105 (c) such conditions relating to the general care and accommodation of protected animals bred, kept or used at the establishment as the Secretary of State considers appropriate in order to ensure:

7

10. (i) that the environment, housing, freedom of movement, food, water and care provided for each such animal are appropriate for the animal's health and well-being¹⁵;
11. (ii) that any restrictions on the extent to which each such animal can satisfy its physiological and ethological needs are kept to the absolute minimum¹⁶;
12. (iii) that the environmental conditions in which such animals are bred, kept or used are checked daily¹⁷;
13. (iv) that the well-being and state of health of such animals are monitored by a suitably qualified person in order to prevent pain or avoidable suffering, distress or lasting harm¹⁸; and
14. (v) that arrangements are made to ensure that any defect or suffering discovered is eliminated as quickly as possible¹⁹;

8

- 106 (d) such conditions as the Secretary of State considers appropriate to ensure that any animal kept alive after being subjected to a series of regulated procedures will continue to be kept at the establishment under the supervision of a veterinary surgeon or other suitably qualified person unless it is moved to another designated establishment or a veterinary surgeon certifies that it will not suffer if it ceases to be kept at a designated establishment²⁰.

Breach of a condition in a certificate does not invalidate it but is a ground for variation or revocation²¹.

1 le a certificate under the Animals (Scientific Procedures) Act 1986 s 6; see PARA 880.

2 le appropriate under the Animals (Scientific Procedures) Act 1986 Sch 1; see PARA 876.

3 As to the meaning of 'protected animal' see PARA 875.

4 As to the meaning of 'regulated procedure' see PARA 876.

5 le under the Animals (Scientific Procedures) Act 1986 s 15; see PARA 889.

6 Animals (Scientific Procedures) Act 1986 s 10(5). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

7 Animals (Scientific Procedures) Act 1986 s 10(5A) (added by SI 1998/1974).

8 le a certificate under the Animals (Scientific Procedures) Act 1986 s 6 or s 7; see PARAS 880-881.

9 Animals (Scientific Procedures) Act 1986 s 10(6)(a).

10 Animals (Scientific Procedures) Act 1986 s 10(6)(b).

11 Animals (Scientific Procedures) Act 1986 s 10(6A)(a) (s 10(6A)-(6D) added by SI 1998/1974).

12 Animals (Scientific Procedures) Act 1986 s 10(6A)(b) (as added: see note 11).

13 Animals (Scientific Procedures) Act 1986 s 10(6A)(c) (as added: see note 11).

14 Animals (Scientific Procedures) Act 1986 s 10(6A)(d) (as added: see note 11).

15 Animals (Scientific Procedures) Act 1986 s 10(6B)(a) (as added: see note 11). When considering what conditions are appropriate to ensure the matters specified in head (c)(i) and (ii) in the text, the Secretary of State must have regard to guidance in Annex II to EC Council Directive 86/609 (OJ L358, 18.12.86, p 1): Animals (Scientific Procedures) Act 1986 s 10(6C) (as so added).

16 Animals (Scientific Procedures) Act 1986 s 10(6B)(b) (as added: see note 11). See also note 15.

17 Animals (Scientific Procedures) Act 1986 s 10(6B)(c) (as added: see note 11).

18 Animals (Scientific Procedures) Act 1986 s 10(6B)(d) (as added: see note 11).

19 Animals (Scientific Procedures) Act 1986 s 10(6B)(e) (as added: see note 11).

20 Animals (Scientific Procedures) Act 1986 s 10(6D) (as added: see note 11). As to veterinary surgeons see PARA 1133.

21 Animals (Scientific Procedures) Act 1986 s 10(7).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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885. Variation and revocation of licences and certificates.

A licence or certificate may be varied or revoked by the Secretary of State either on the ground¹ of breach of a condition or in any other case in which it appears to him appropriate to do so, or at the request of the holder².

¹ ie the ground mentioned in the Animals (Scientific Procedures) Act 1986 s 10(7); see PARAS 883-884.

² Animals (Scientific Procedures) Act 1986 s 11. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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886. Right to make representations.

Where the Secretary of State proposes to refuse a licence or certificate or to vary or revoke it other than at the request of the holder, he must serve on the holder a notice of his intention to do so¹. The notice must state the reasons for which he proposes to act and give particulars of the right of the person concerned to make representations². Written or oral representations may be made to a person appointed by the Secretary of State³. The holder of a licence or certificate who is dissatisfied with any condition contained in it may likewise make written or oral representations to such person⁴, who must, after considering them, make a report to the Secretary of State⁵. The latter must furnish a copy of the report to the person making the representations and take it into account in making his decision to refuse or vary or revoke the licence or certificate⁶. The credentials of a person appointed to receive representations are laid down⁷.

1 Animals (Scientific Procedures) Act 1986 s 12(1). The notice may be served either personally or by post: s 12(8). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 Animals (Scientific Procedures) Act 1986 s 12(2).

3 Animals (Scientific Procedures) Act 1986 s 12(3). Notice of the wish to make such representations must be given to the Secretary of State before such date as is specified in the notice of refusal, not being less than 28 days after the date of service: s 12(3). See the Animals (Scientific Procedures) (Procedures for Representation) Rules 1986, SI 1986/1911, made under the Animals (Scientific Procedures) Act 1986 s 12(7).

4 Animals (Scientific Procedures) Act 1986 s 12(4). Representations do not affect the operation of any condition unless and until it is varied under s 11: s 12(4); see PARA 885.

5 Animals (Scientific Procedures) Act 1986 s 12(6).

6 Animals (Scientific Procedures) Act 1986 s 12(6).

7 See the Animals (Scientific Procedures) Act 1986 s 12(5) (amended by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 66). As from a day to be appointed, the Animals (Scientific Procedures) Act 1986 s 12(5) is further amended by the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 3 para 5 and by the Tribunals, Courts and Enforcement Act 2007 s 50, Sch 10 Pt I para 18. At the date at which this volume states the law, no such day had been appointed for either amendment.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

886 Right to make representations

NOTE 3--SI 1986/1911 amended: SI 2008/2683.

NOTE 7--Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 3 para 5 in force 1 October 2009: SI 2009/1604. Tribunals, Courts and Enforcement Act 2007 Sch 10 para 18 in force 21 July 2008: SI 2008/1653.

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887. Suspension in cases of urgency.

If it appears to the Secretary of State to be urgently necessary for the welfare of any protected animals¹ that a licence or certificate should cease to have effect forthwith, he may by notice served on the holder suspend its operation for a period not exceeding three months². If during that period a notice of proposed variation or revocation of the licence or certificate is served³, but at the end of that period (1) the time for notifying⁴ the Secretary of State of a wish to make representations has not expired; or (2) representations are to be or are being made; or (3) representations have been made but the Secretary of State has not received or not completed consideration of the report of the person to whom they were made, he may by notice served on the holder further suspend the licence or certificate until he is able to decide whether to vary or revoke it⁵. Such further suspension cannot be for longer than three months at a time⁶.

1 As to the meaning of 'protected animals' see PARA 875.

2 Animals (Scientific Procedures) Act 1986 s 13(1). The notice may be served personally or by post: s 13(3). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

3 Ie under the Animals (Scientific Procedures) Act 1986 s 12; see PARA 886.

4 Ie under the Animals (Scientific Procedures) Act 1986 s 12(3).

5 Animals (Scientific Procedures) Act 1986 s 13(2).

6 Animals (Scientific Procedures) Act 1986 s 13(2).

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (10) SCIENTIFIC PROCEDURES AND MEDICINAL TESTS/(i) Scientific Procedures/888. Re-use of protected animals.

888. Re-use of protected animals.

Where a protected animal¹ has been subjected to a series of regulated procedures² for a particular purpose, and any of those procedures has caused severe pain or distress to that animal, that animal must not be used for any further regulated procedures which will entail severe pain or distress³.

Where a protected animal has been subjected to a series of regulated procedures for a particular purpose and has been given a general anaesthetic for any of those procedures and allowed to recover consciousness, that animal must not be used for any further regulated procedures⁴. However, this does not preclude the use of an animal with the consent of the Secretary of State if (1) the procedure, or each procedure, for which the anaesthetic was given consisted only of surgical preparation essential for a subsequent procedure; or (2) the anaesthetic was administered solely to immobilise the animal; or (3) the animal is under general anaesthesia throughout the further procedures and not allowed to recover consciousness⁵.

Without prejudice to the above, where any protected animal has been subjected to a series of regulated procedures for a particular purpose, it may not be used for any further regulated procedure without the consent of the Secretary of State⁶.

A person who contravenes these provisions is guilty of an offence and on summary conviction is liable to imprisonment for a term not exceeding three months or to a fine not exceeding level 4 on the standard scale or to both⁷.

1 As to the meaning of 'protected animal' see PARA 875.

2 As to the meaning of 'regulated procedures' see PARA 876.

3 Animals (Scientific Procedures) Act 1986 s 14(1) (s 14 substituted by SI 1998/1974).

4 Animals (Scientific Procedures) Act 1986 s 14(2) (as substituted: see note 3).

5 Animals (Scientific Procedures) Act 1986 s 14(2)(a)-(c) (as substituted: see note 3). Consent may relate to a specified animal or to animals used in specified procedures or circumstances: s 14(4) (as so substituted). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

6 Animals (Scientific Procedures) Act 1986 s 14(3) (as substituted: see note 3). As to consent see note 5.

7 Animals (Scientific Procedures) Act 1986 s 22(3). As to the standard scale see PARA 738 note 1.

These provisions apply to offences under the Animals (Scientific Procedures) Act 1986 ss 14-17, 18(3): see PARAS 889-893.

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (10) SCIENTIFIC PROCEDURES AND MEDICINAL TESTS/(i) Scientific Procedures/889. Killing animals at conclusion of regulated procedures.

889. Killing animals at conclusion of regulated procedures.

Where a protected animal¹ has been subjected to a series of regulated procedures² for a particular purpose and at the conclusion of the series is suffering or likely to suffer adverse effects, the person who applied those procedures, or the last of them, must cause the animal to be killed immediately by an appropriate method³ or by such other method as may be authorised by the personal licence⁴ of the person by whom it is killed⁵.

A person who contravenes this provision is guilty of an offence⁶.

1 As to the meaning of 'protected animal' see PARA 875.

2 As to the meaning of 'regulated procedures' see PARA 876.

3 Ie appropriate under the Animals (Scientific Procedures) Act 1986 Sch 1; see PARA 876.

4 As to personal licences see PARA 878. This clearly involves killing by the person applying the procedures or someone 'caused' by him to do the killing.

5 Animals (Scientific Procedures) Act 1986 s 15(1). This is without prejudice to any condition in a project licence (see PARA 883) requiring an animal to be killed at the conclusion of a regulated procedure in circumstances other than those mentioned above: s 15(2).

6 Animals (Scientific Procedures) Act 1986 s 22(3). For penalties see PARA 888 text and note 7.

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (10) SCIENTIFIC PROCEDURES AND MEDICINAL TESTS/(i) Scientific Procedures/890. Prohibition of public displays.

890. Prohibition of public displays.

No person may carry out any regulated procedure¹ as an exhibition to the general public or carry out any such procedure which is shown live on television for general reception². No person may publish a notice or advertisement announcing the carrying out of any regulated procedure in a manner which would contravene the above provision³.

A person who contravenes these provisions is guilty of an offence⁴.

1 As to the meaning of 'regulated procedure' see PARA 876.

2 Animals (Scientific Procedures) Act 1986 s 16(1).

3 Animals (Scientific Procedures) Act 1986 s 16(2).

4 Animals (Scientific Procedures) Act 1986 s 22(3). For penalties see PARA 888 text and note 7.

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (10) SCIENTIFIC PROCEDURES AND MEDICINAL TESTS/(i) Scientific Procedures/891. Use of neuromuscular blocking agents.

891. Use of neuromuscular blocking agents.

No person may in the course of a regulated procedure¹ use any neuromuscular blocking agent unless expressly authorised to do so by the personal and project licences² under which the procedure is carried out, or use any such agent instead of an anaesthetic³.

A person who contravenes these provisions is guilty of an offence⁴.

- 1 As to the meaning of 'regulated procedure' see PARA 876.
- 2 As to personal and project licences see PARAS 878, 879 respectively.
- 3 Animals (Scientific Procedures) Act 1986 s 17.
- 4 Animals (Scientific Procedures) Act 1986 s 22(3). For penalties see PARA 888 text and note 7.

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (10) SCIENTIFIC PROCEDURES AND MEDICINAL TESTS/(i) Scientific Procedures/892. Killing of animals undergoing excessive suffering.

892. Killing of animals undergoing excessive suffering.

If an inspector¹ considers that a protected animal² is undergoing excessive suffering he may require it to be killed immediately by an appropriate method³ or one which may be authorised by the personal licence⁴ of any person to whom he addresses the requirement⁵.

1 As to inspectors see PARA 893.

2 As to the meaning of 'protected animal' see PARA 875.

3 Is appropriate under the Animals (Scientific Procedures) Act 1986 Sch 1: see PARA 876 note 8.

4 As to personal licences see PARA 878.

5 Animals (Scientific Procedures) Act 1986 s 18(3).

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (10) SCIENTIFIC PROCEDURES AND MEDICINAL TESTS/(i) Scientific Procedures/893. Inspectors.

893. Inspectors.

The Secretary of State has power to appoint inspectors for the purposes of the Animals (Scientific Procedures) Act 1986 having such medical or veterinary qualifications as he thinks requisite¹.

An inspector's duties include advising the Secretary of State on applications for personal and project licences² and requests for their variation, revocation or periodical review; likewise on applications for certificates³ and requests for variation or revocation; and also visiting (1) places⁴ where regulated procedures⁵ are carried out to determine whether those procedures are authorised by the requisite licences and whether the conditions of those licences are being complied with; and (2) designated establishments⁶ to determine whether the conditions of their certificates are being complied with⁷.

In addition, an inspector must report to the Secretary of State any case in which any provision of the Animals (Scientific Procedures) Act 1986 or any condition of a licence or certificate under the Act has not been or is not being complied with, and to advise him on the appropriate action to be taken⁸.

An inspector may in certain circumstances require an animal to be killed if it is undergoing unnecessary suffering⁹.

1 Animals (Scientific Procedures) Act 1986 s 18(1). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 As to personal and project licences see PARAS 878, 879 respectively.

3 As to such certificates see PARAS 880-881.

4 As to the meaning of 'place' see PARA 878 note 2.

5 As to the meaning of 'regulated procedure' see PARA 876.

6 ie designated by a certificate under the Animals (Scientific Procedures) Act 1986 s 6 or s 7: see PARAS 880-881.

7 Animals (Scientific Procedures) Act 1986 s 18(2)(a)-(d).

8 Animals (Scientific Procedures) Act 1986 s 18(2)(e).

9 See PARA 892.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (10) SCIENTIFIC PROCEDURES AND MEDICINAL TESTS/(i) Scientific Procedures/894. The Animal Procedures Committee.

894. The Animal Procedures Committee.

The Animals (Scientific Procedures) Act 1986 makes provision for the appointment of an Animal Procedures Committee¹ with the duty of advising the Secretary of State on such matters concerned with the Act and his functions under it as the committee may determine, or as may be referred to it by the Secretary of State².

In its consideration of any matter the committee must have regard to the legitimate requirements of science and industry and the protection of animals against avoidable suffering and unnecessary use in scientific procedures³.

It may promote research relevant to its functions and may obtain advice or assistance from other persons with knowledge or experience appearing to the committee to be relevant⁴. It may perform any of its functions by sub-committees⁵.

1 See the Animals (Scientific Procedures) Act 1986 s 19(1). As to the composition of the committee, qualifications, appointment, remuneration and expenses see s 19(2)-(9). It must report each year to the Secretary of State, who must in turn lay such report before Parliament: s 20(5). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 Animals (Scientific Procedures) Act 1986 s 20(1).

3 Animals (Scientific Procedures) Act 1986 s 20(2).

4 Animals (Scientific Procedures) Act 1986 s 20(4).

5 Animals (Scientific Procedures) Act 1986 s 20(3).

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (10) SCIENTIFIC PROCEDURES AND MEDICINAL TESTS/(i) Scientific Procedures/895. Guidance and codes of practice.

895. Guidance and codes of practice.

The Secretary of State must publish information as guidance to the manner in which he proposes to exercise his power to grant licences¹ and certificates² under the Animals (Scientific Procedures) Act 1986 and in regard to proposed conditions to be included in them³. He must issue codes of practice as to the care of protected animals⁴ and their use for regulated procedures⁵, and may approve such codes issued by other persons⁶, but he must consult the Animal Procedures Committee before issuing, approving, altering or approving any alteration in any such codes⁷.

The Secretary of State must lay before Parliament copies of information issued or codes approved as described above⁸, and must publish and lay before Parliament each year such information as he considers appropriate with respect to the use of protected animals in the previous year for experimental or other purposes⁹.

1 As to licences under the Animals (Scientific Procedures) Act 1986 see PARAS 878-879.

2 As to certificates under the Animals (Scientific Procedures) Act 1986 see PARAS 880-881.

3 Animals (Scientific Procedures) Act 1986 s 21(1). The Secretary of State must consult the Animal Procedures Committee (see PARA 894) before publishing or altering any such information: s 21(3). Guidance on the operation of the Act, ordered to be printed on 23 March 2000 (and prepared on 15 May 2000), is published by The Stationery Office. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

4 As to the meaning of 'protected animals' see PARA 875. Codes of practice have been issued for: the Housing and care of animals (21 March 2005); the Housing of animals in designated breeding and supplying establishments (21 March 2006); and the Humane killing of animals under the Animals (Scientific Procedures) Act 1986 Sch 1 (13 January 1997). As to designated breeding and supplying establishments see PARA 881.

5 As to the meaning of 'regulated procedures' see PARA 876.

6 Animals (Scientific Procedures) Act 1986 s 21(2). As to the effect of breach of any provision of a code upon criminal or civil proceedings see PARA 899.

7 Animals (Scientific Procedures) Act 1986 s 21(3).

8 Animals (Scientific Procedures) Act 1986 s 21(5).

9 Animals (Scientific Procedures) Act 1986 s 21(7).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (10) SCIENTIFIC PROCEDURES AND MEDICINAL TESTS/(i) Scientific Procedures/896. False statements to obtain licences or certificates.

896. False statements to obtain licences or certificates.

A person is guilty of an offence if, for the purpose of obtaining or assisting another to obtain a licence¹ or certificate², he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes such information³.

1 As to licences under the Animals (Scientific Procedures) Act 1986 see PARAS 878-879.

2 As to certificates under the Animals (Scientific Procedures) Act 1986 see PARAS 880-881.

3 Animals (Scientific Procedures) Act 1986 s 23(1). On summary conviction the penalty is imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both: s 23(2). As to the standard scale see PARA 738 note 1. As from a day to be appointed, the offence is punishable only by a fine not exceeding level 4 on the standard scale: s 23(2) (prospectively amended by the Criminal Justice Act 2003 s 332, Sch 37 Pt 9). At the date at which this volume states the law, no such day had been appointed.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (10) SCIENTIFIC PROCEDURES AND MEDICINAL TESTS/(i) Scientific Procedures/897. Protection of confidential information.

897. Protection of confidential information.

A person is guilty of an offence if, otherwise than for the purpose of discharging his functions under the Animals (Scientific Procedures) Act 1986, he discloses any information which has been obtained by him in the exercise of those functions and which he knows or has reasonable grounds for believing to have been given in confidence¹.

¹ Animals (Scientific Procedures) Act 1986 s 24(1). The penalty on conviction on indictment is a term of imprisonment not exceeding two years or a fine, or both; and on summary conviction, a term not exceeding six months or a fine not exceeding the statutory maximum, or both: s 24(2). As to the statutory maximum see PARA 877 note 6.

As to the confidentiality of information disclosed in project licence applications see *Secretary of State for the Home Department v British Union for the Abolition of Vivisection* [2008] EWHC 892 (QB), [2008] All ER (D) 365 (Apr).

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817-898 Animal welfare generally ... Powers of search and prosecutions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (10) SCIENTIFIC PROCEDURES AND MEDICINAL TESTS/(i) Scientific Procedures/898. Powers of search and prosecutions.

898. Powers of search and prosecutions.

If satisfied by information on oath that there are reasonable grounds for believing that an offence under the Animals (Scientific Procedures) Act 1986 has been or is being committed at any place¹, a justice of the peace may issue a warrant authorising a constable to enter it, if need be by such force as is reasonably necessary, to search it and require any person found there to give his name and address². A warrant may authorise a constable to be accompanied by an inspector³ appointed under the Act and it must require it if the place in question is a designated establishment⁴.

Any intentional obstruction of a constable or inspector in these circumstances or refusal to give a correct or any name and address is an offence⁵.

Prosecutions either under the Animals (Scientific Procedures) Act 1986 or for an offence of cruelty under the Animal Welfare Act 2006, if the allegation concerns an animal at a designated establishment, may not be brought in England and Wales except by or with the consent of the Director of Public Prosecutions⁶.

Summary proceedings for an offence under the Animals (Scientific Procedures) Act 1986 may be taken against any person at any place at which he is for the time being⁷. An information triable summarily in England and Wales may be so tried if laid at any time within three years after the offence and within six months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions to justify proceedings comes to his knowledge⁸.

1 As to the meaning of 'place' see PARA 878 note 2.

2 Animals (Scientific Procedures) Act 1986 s 25(1).

3 As to the appointment of inspectors see PARA 893.

4 Animals (Scientific Procedures) Act 1986 s 25(2). As to designated establishments see PARAS 880-881.

5 Animals (Scientific Procedures) Act 1986 s 25(3). The penalty on summary conviction is imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both: s 25(3). As to the standard scale see PARA 738 note 1. As from a day to be appointed, the offence is punishable only by a fine not exceeding level 4 on the standard scale: s 25(3) (prospectively amended by the Criminal Justice Act 2003 s 332, Sch 37 Pt 9). At the date at which this volume states the law, no such day had been appointed.

6 Animals (Scientific Procedures) Act 1986 s 26(1) (amended by the Animal Welfare Act 2006 s 64, Sch 3 para 12(2)). As to offences under the Animal Welfare Act 2006 ss 4, 5, 6(1), (2), 7-9 see PARAS 826-831. A person convicted of an offence under the Animal Welfare Act 2006 in respect of an animal at a designated establishment is liable to the penalties prescribed by the Animals (Scientific Procedures) Act 1986 s 22(1) (see PARA 877 text and note 6) rather than any penalty by way of imprisonment or fine provided for in the Animal Welfare Act 2006: Animals (Scientific Procedures) Act 1986 s 22(5) (amended by the Animal Welfare Act 2006 Sch 3 para 12(1)).

7 Animals (Scientific Procedures) Act 1986 s 26(2).

8 Animals (Scientific Procedures) Act 1986 s 26(3), which applies notwithstanding anything in the Magistrates' Courts Act 1980 s 127(1) (see **MAGISTRATES** vol 29(2) (Reissue) PARA 589). A certificate by the Director of Public Prosecutions as to the date is conclusive evidence of the fact: Animals (Scientific Procedures) Act 1986 s 26(5).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (10) SCIENTIFIC PROCEDURES AND MEDICINAL TESTS/(i) Scientific Procedures/899. Effect of evidence of failure to comply with code.

899. Effect of evidence of failure to comply with code.

A failure by any person to comply with any provision of a code issued by the Secretary of State or approved by him under the provisions of the Animals (Scientific Procedures) Act 1986¹ does not of itself render that person liable to criminal or civil proceedings; however, any such code is admissible in evidence in any such proceedings and, if any of its provisions appears to the court to be relevant to any question arising in those proceedings, it must be taken into account in determining that question².

¹ See PARA 895. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

² Animals (Scientific Procedures) Act 1986 s 21(4).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (10) SCIENTIFIC PROCEDURES AND MEDICINAL TESTS/ (ii) Medicinal Tests/900. Medicinal tests on animals.

(ii) Medicinal Tests

900. Medicinal tests on animals.

The law relating generally to medicinal products is dealt with elsewhere in this work, and the legislation applicable to that subject contains special provisions dealing with clinical trials and medicinal tests carried out on animals, which include restrictions on the disposal of such animals¹. No such specialised provisions, however, unless so expressed, derogate from the general provisions of the law relating to cruelty to animals².

1 See the Medicines Act 1968 ss 31-39; and **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 126 et seq.

2 As to cruelty generally see PARA 817 et seq.

UPDATE

900 Medicinal tests on animals

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/5. ANIMAL WELFARE AND PROTECTION FROM CRUELTY/ (10) SCIENTIFIC PROCEDURES AND MEDICINAL TESTS/ (ii) Medicinal Tests/901. Cosmetics tested on animals.

901. Cosmetics tested on animals.

Provision is made prohibiting the supply of cosmetic products which contain (1) certain parts of specified bovine or ovine animals or ingredients derived therefrom¹; or (2) ingredients or combinations of ingredients which are tested on animals where such testing takes place after 11 September 2004 and is undertaken to ensure that the cosmetic product satisfies the relevant requirements as to safety of cosmetic products². Certain labelling requirements as to the testing of such products on animals must also be satisfied³.

1 See the Cosmetic Products (Safety) Regulations 2004, SI 2004/2152, reg 5(3) (substituted by SI 2007/1623); and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 588.

2 See the Cosmetic Products (Safety) Regulations 2004, SI 2004/2152, reg 5(7)-(14); and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 588. The requirements referred to are any requirements of those Regulations.

3 See the Cosmetic Products (Safety) Regulations 2004, SI 2004/2152, reg 9(1)(i); and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 591. This does not apply in respect of cosmetic products placed on the market in the Community prior to 11 September 2004: reg 9(10).

UPDATE

901 Cosmetics tested on animals

NOTES--SI 2004/2152 replaced: Cosmetic Products (Safety) Regulations 2008, SI 2008/1284 (amended by SI 2008/2173, SI 2008/2566, SI 2009/796, SI 2009/1346, SI 2009/2562, SI 2009/3367).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/ (1) DOG REGISTRATION SCHEME; LICENCES/902. Dog registration scheme.

6. DOGS

(1) DOG REGISTRATION SCHEME; LICENCES

902. Dog registration scheme.

The Secretary of State or the Welsh Ministers may by regulations make provision for the establishment and administration of a dog registration scheme by local authorities or by such other organisations as he may, after consulting with them, designate¹.

¹ Local Government Act 1988 s 37. At the date at which this volume states the law, no such regulations had been made. Dog licences were abolished by ss 38(1), (4), 41, Sch 7 Pt V. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

UPDATE

902 Dog registration scheme

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/ (1) DOG REGISTRATION SCHEME; LICENCES/903. Disqualification from keeping dog.

903. Disqualification from keeping dog.

Where a person has been convicted of an offence under the Protection of Badgers Act 1992, and had or used that dog in the commission of the offence, he may be disqualified from having custody of a dog¹.

A number of provisions have particular effect to disqualify a person from having custody of a dog in specified circumstances².

Dogs also fall within the ambit of the provisions under which a person may be disqualified from owning or keeping an animal following conviction of an offence of cruelty to an animal³.

1 See the Protection of Badgers Act 1992 s 13; and PARA 989 text and notes 22-28.

2 See PARAS 911-912, 933-934.

3 See the Animal Welfare Act 2006 s 34; and PARA 852.

UPDATE

903 Disqualification from keeping dog

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/ (2) TRESPASS; CONTROL OF DOGS/904. Trespass by dog.

(2) TRESPASS; CONTROL OF DOGS

904. Trespass by dog.

The owner of a dog is not answerable in trespass for its unauthorised entry into the land of another, often described as an unprovoked trespass¹, but a man is liable in trespass if he wilfully sends a dog on another's land in pursuit of game, although he did not himself go on the land², or if he allows a dog to roam at large, knowing it to be addicted to destroying game³.

Where a trespassing dog causes damage by killing or injuring livestock, any person who is a keeper of the dog is liable for the damage caused⁴. For this purpose the dog's keeper is the person who either owns the dog or has it in his possession or is the head of a household of which a member under 16 owns the dog or has it in his possession⁵.

1 *Mitten v Faudrye* (1626) Poph 161, where the defendant chased sheep off his land with a little dog, which continued chasing them when on the plaintiff's land; the defendant, it was said, was entitled to chase the sheep off his own land, and if a trespass at all, it would be an involuntary trespass, as he called the dog back. This case is distinguished in *Beckwith v Shordike* (1767) 4 Burr 2092, where a defendant was held liable in trespass for his dog killing a deer, on the ground that the owner took the dog with him and was really the trespasser. See also *Mason v Keeling* (1699) 1 Ld Raym 606 at 608 per Holt CJ: 'The law does not oblige the owner to keep the dog in his house; for if a dog break a neighbour's close, the owner will not be subject to an action for it', quoting *Mitten v Faudrye* (1626) Poph 161. Cf per Willes J in *Read v Edwards* (1864) 17 CBNS 245 at 261, and in *Cox v Burbidge* (1863) 13 CBNS 430 at 440-441; but the point did not really arise in *Read v Edwards* (1864) 17 CBNS 245, as it was there held that the chasing of game was a mischievous propensity, and knowledge was proved. See also *Brown v Giles* (1823) 1 C & P 118; *Sanders v Teape and Swan* (1884) 51 LT 263, where a big dog jumped over a garden wall and alighted on the plaintiff, who was digging a well; and *Hines v Tousley* (1926) 95 LJB 773, CA (uncontrolled dog causing injury on common staircase). As to cats see PARA 752.

2 *R v Pratt* (1855) 4 E & B 860; *Dimmock v Allenby* (1810) cited 2 Marsh at 582.

3 *Read v Edwards* (1864) 17 CBNS 245.

4 See PARAS 921-922. As to liability for damage caused by animals generally see PARA 747 et seq.

5 Animals Act 1971 s 6(3); see PARA 921.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/ (2) TRESPASS; CONTROL OF DOGS/905. Restrictions on taking dogs onto access land.

905. Restrictions on taking dogs onto access land.

The right provided by the Countryside and Rights of Way Act 2000 to enter and remain on any access land for the purposes of open air recreation¹ may be restricted so as to be exercisable only by persons who do not take dogs on the land².

Notwithstanding the above, it is expressly provided that between 1 March and 31 July in any year that right does not entitle a person to be on any land if he takes, or allows to enter or remain, any dog which is not on a short lead³. Nor does it entitle a person at any time of year to be on any land if he takes, or allows to enter or remain, any dog which is not on a short lead and which is in the vicinity of livestock⁴.

1 See the Countryside and Rights of Way Act 2000 s 2(1); and, generally, see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 583.

2 Countryside and Rights of Way Act 2000 s 21(3)(c).

3 Countryside and Rights of Way Act 2000 Sch 2 para 4. 'Short lead' means a lead of fixed length, which is not more than 6 metres long: Sch 2 para 6. This restriction may be relaxed by direction of a relevant authority, with the consent of the land owner: see Sch 2 para 7.

4 Countryside and Rights of Way Act 2000 Sch 2 para 5. See also Sch 2 para 7; and note 3.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/ (2) TRESPASS; CONTROL OF DOGS/906. Orders for regulation and control of dogs.

906. Orders for regulation and control of dogs.

The Secretary of State and the Welsh Ministers¹ have extensive powers to make orders for the regulation and control of dogs in a wide variety of circumstances². These powers and any orders made in the exercise of them are dealt with in the following paragraphs and under their appropriate headings elsewhere in this title³.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 See the Animal Health Act 1981 ss 1, 13. Orders made under Acts repealed by the 1981 Act continue in force and have effect as though made under that Act: see s 95; and the Interpretation Act 1978 s 17(2)(b). An order may provide for its enforcement by local authority officers, rather than the police: see the Animal Health Act 1981 s 13(3), (4) (added by the Environmental Protection Act 1990 s 151(1)).

3 The principal orders now in force relating to dogs are the Control of Dogs Order 1992, SI 1992/901 (see PARA 909); the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211 (see PARA 1054); and the Rabies (Control) Order 1974, SI 1974/2212 (see PARA 1057). Dogs are also 'animals' for the purposes of the Animals (Miscellaneous Provisions) Order of 1927, SR & O 1927/290 (see PARA 1050 note 1), and the Anthrax Order 1991, SI 1991/2814. See also the Foot-and-Mouth Disease (England) Order 2006, SI 2006/182; the Foot-and-Mouth Disease (Wales) Order 2006, SI 2006/179; the Avian Influenza and Influenza of Avian Origin in Mammals (England) (No 2) Order 2006, SI 2006/2702; and the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006, SI 2006/2927.

UPDATE

906 Orders for regulation and control of dogs

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

NOTE 3--SI 1991/2814 amended: see PARA 1041. SI 2006/182, SI 2006/2702 amended: see PARA 868.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/ (2) TRESPASS; CONTROL OF DOGS/907. Power to make dog control orders.

907. Power to make dog control orders.

A primary or secondary authority¹ may make an order, known as a dog control order, providing for an offence or offences² relating to the control of dogs in respect of any land in its area³. An offence relates to the control of dogs if it relates to (1) fouling of land by dogs and the removal of dog faeces⁴; (2) the keeping of dogs on leads⁵; (3) the exclusion of dogs from land⁶; or (4) the number of dogs which a person may take on to any land⁷. The land in respect of which an authority may make, revoke or amend a dog control order is any land which is open to the air⁸ and to which the public are entitled or permitted to have access, with or without payment⁹.

1 Each of the following is a 'primary authority': (1) a district council in England; (2) a county council in England for an area for which there is no district council; (3) a London borough council; (4) the Common Council of the City of London; (5) the Council of the Isles of Scilly; (6) a county or county borough council in Wales: Clean Neighbourhoods and Environment Act 2005 s 58(1). Each of the following is a 'secondary authority': (a) a parish council in England; (b) a community council in Wales: s 58(2). The appropriate person may by order designate any person or body exercising functions under an enactment as such a secondary authority in respect of an area specified in the order: s 58(3). 'Appropriate person' means, in relation to England, the Secretary of State and, in relation to Wales, the Welsh Ministers: s 66; Government of Wales Act 2006 s 162(1), Sch 11 para 30. Where the area of an authority designated as a secondary authority under the Clean Neighbourhoods and Environment Act 2005 s 58(3) is to any extent the same as that of a parish or community council, s 63(1) (see note 4) applies in relation to orders made by the designated authority and that council as if the council were a primary authority: s 63(2).

Any power conferred by the provisions of ss 55-67 on the Secretary of State or the Welsh Ministers to make regulations or an order includes power to make different provision for different purposes (including different provision for different authorities or different descriptions of authority), and power to make consequential, supplementary, incidental and transitional provision and savings: s 67(1). Any power conferred by the provisions of ss 55-67 on the Secretary of State or the Welsh Ministers to make regulations or an order is exercisable by statutory instrument: s 67(2). As respects England, regulations and orders made by the Secretary of State are subject to annulment in pursuance of a resolution of either House of Parliament: s 67(4). As to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

2 An offence provided for in a dog control order must be an offence which is prescribed for the purposes of the Clean Neighbourhoods and Environment Act 2005 s 55 by regulations made by the appropriate person: s 55(4). Such regulations may in particular (1) specify all or part of the wording to be used in a dog control order for the purpose of providing for any offence; (2) permit a dog control order to specify the times at which, or periods during which, an offence is to apply; (3) provide for an offence to be defined by reference to failure to comply with the directions of a person of a description specified in the regulations: s 55(5). As respects England, the Secretary of State may not make regulations under s 55(4) or 56(1) (relating to penalties) unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament: s 67(3). See also note 1. In relation to England, as to the specified wording to be used in a dog control order see the Dog Control Orders (Prescribed Offences and Penalties, etc) Regulations 2006, SI 2006/1059, reg 4, Schs 1-5. In relation to England, a dog control order may specify the times at which, or the periods during which, an offence is to apply: reg 3(3).

The appropriate person must by regulations prescribe the penalties, or maximum penalties, which may be provided for in a dog control order in relation to any offence: Clean Neighbourhoods and Environment Act 2005 s 56(1). Such regulations may not in any case permit a dog control order to provide for a penalty other than a fine not exceeding level 3 on the standard scale in relation to any offence: s 56(2). As to the standard scale see PARA 738 note 1. The appropriate person must by regulations prescribe such other requirements relating to the content and form of a dog control order as he thinks fit: s 56(3). The appropriate person must by regulations prescribe the procedure to be followed by a primary or secondary authority before and after making a dog control order, and those regulations must in particular include provision as to (a) consultation to be undertaken before a dog control order is made; (b) the publicising of a dog control order after it has been made: s 56(4), (5).

In relation to England, the penalty to be provided in relation to any offence in a dog control order is, on summary conviction, a fine not exceeding level 3 on the standard scale: Dog Control Orders (Prescribed Offences and Penalties, etc) Regulations 2006, SI 2006/1059, reg 3(2). As to the form and content of dog control orders in England see regs 4, 5, Schs 1-6. As to consultation and publication requirements see the Dog Control Orders (Procedures) Regulations 2006, SI 2006/798 (England).

3 Clean Neighbourhoods and Environment Act 2005 s 55(1), (2). A dog control order may specify the land in respect of which it applies specifically or by description: s 55(6). A dog control order may be revoked or amended by the authority which made it, but the provisions of ss 55-67 apply in relation to any such amendment as if it were the making of a new order: s 55(7).

4 Clean Neighbourhoods and Environment Act 2005 s 55(3)(a). Failing to remove dog faeces is capable of being provided for as an offence in a dog control order: Dog Control Orders (Prescribed Offences and Penalties, etc) Regulations 2006, SI 2006/1059, reg 3(1), Sch 1; Dog Control Orders (Miscellaneous Provisions) (Wales) Regulations 2007, SI 2007/702, reg 7(1), Sch 1.

Where a primary authority makes a dog control order providing for an offence relating to a matter specified in any of heads (1)-(4) in the text as respects any land, a secondary authority may not make a dog control order providing for any offence which relates to the matter specified in that head as respects that land, and any dog control order previously made by a secondary authority providing for any offence which relates to the matter specified in that head, to the extent that it so provides, ceases to have effect: Clean Neighbourhoods and Environment Act 2005 s 63(1).

Where a primary or secondary authority has at any time power to make a byelaw in relation to any matter specified in any of heads (1)-(4) in the text as respects any land, it may not make such a byelaw if at that time it has power under the provisions of ss 55-67 to make a dog control order as respects that land in relation to the matter specified in that head: s 64(1). However, s 64(1) does not affect any byelaw which the authority had power to make at the time it was made: s 64(2). Where a dog control order is made in relation to any matter specified in any of heads (1)-(4) in the text as respects any land, any byelaw previously made by a primary or secondary authority which has the effect of making a person guilty of any offence in relation to the matter specified in that head as respects that land ceases to have that effect: s 64(3). Where any act or omission would constitute an offence under a dog control order and any byelaw, the act or omission is not to constitute an offence under the byelaw: s 64(4).

5 Clean Neighbourhoods and Environment Act 2005 s 55(3)(b). In England, not keeping a dog on a lead, and not putting and keeping a dog on a lead, under direction are capable of being provided for as offences in a dog control order: Dog Control Orders (Prescribed Offences and Penalties, etc) Regulations 2006, SI 2006/1059, reg 3(1), Schs 2, 3.

6 Clean Neighbourhoods and Environment Act 2005 s 55(3)(c). In England, permitting a dog to enter land from which it is excluded is capable of being provided for as an offence in a dog control order: Dog Control Orders (Prescribed Offences and Penalties, etc) Regulations 2006, SI 2006/1059, reg 3(1), Sch 4.

7 Clean Neighbourhoods and Environment Act 2005 s 55(3)(d). In England, making more than a specified number of dogs onto land is capable of being provided for as an offence in a dog control order: Dog Control Orders (Prescribed Offences and Penalties, etc) Regulations 2006, SI 2006/1059, reg 3(1), Sch 5.

8 Any land which is covered is to be treated as land which is 'open to the air' if it is open to the air on at least one side: Clean Neighbourhoods and Environment Act 2005 s 57(2).

9 Clean Neighbourhoods and Environment Act 2005 s 57(1). The appropriate person may by order designate land, specifically or by description, as land to which the provisions of ss 55-67 do not apply (generally or for such purposes as may be specified in the order): s 57(3), (4). See the Controls on Dogs (Non-application to Designated Land) Order 2006, SI 2006/779 (England); and the Controls on Dogs (Non-application to Designated Land) (Wales) Order 2007, SI 2007/701. Where a private Act confers powers on a person other than a primary or secondary authority for the regulation of any land, that person may, by notice in writing given to the primary and secondary authorities in whose area the land is situated, exclude the application of the provisions of the Clean Neighbourhoods and Environment Act 2005 ss 55-67 to that land: s 57(5).

UPDATE

907-914 Power to make dog control orders ... Destruction orders otherwise than on a conviction

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

907 Power to make dog control orders

NOTE 9--SI 2006/779 replaced: SI 2009/2829 (England).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/ (2) TRESPASS; CONTROL OF DOGS/908. Dog control orders: fixed penalty notices.

908. Dog control orders: fixed penalty notices.

Where on any occasion (1) an authorised officer¹ of a primary or secondary authority² has reason to believe that a person has committed an offence under a dog control order³ made by that authority; or (2) an authorised officer of a secondary authority has reason to believe that a person has in its area committed an offence under a dog control order made by a primary authority, the authorised officer may give that person a notice offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty⁴. Where a person is given a fixed penalty notice in respect of an offence, no proceedings may be instituted for that offence before the expiration of the period of 14 days following the date of the notice, and he may not be convicted of that offence if he pays the fixed penalty before the expiration of that period⁵. A fixed penalty notice must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence⁶, and must state (a) the period during which proceedings will not be taken for the offence; (b) the amount of the fixed penalty; and (c) the person to whom and the address at which the fixed penalty may be paid⁷.

The amount of a fixed penalty payable to a primary or secondary authority in pursuance of a fixed penalty notice in respect of an offence under a dog control order is the amount specified by the authority which made the order and, if no amount is so specified, is £75⁸. A primary or secondary authority may make provision for treating a fixed penalty payable to that authority in pursuance of a fixed penalty notice as having been paid if a lesser amount is paid before the end of a period specified by the authority⁹. If an authorised officer of a primary or secondary authority proposes to give a person a fixed penalty notice, the officer may require the person to give him his name and address¹⁰. A person commits an offence if he fails to give his name and address when so required, or if he gives a false or inaccurate name or address in response to such a requirement¹¹.

1 'Authorised officer', in relation to a primary or secondary authority, means (1) an employee of the authority who is authorised in writing by the authority for the purpose of giving notices under the Clean Neighbourhoods and Environment Act 2005 s 59; (2) any person who, in pursuance of arrangements made with the authority, has the function of giving such notices and is authorised in writing by the authority to perform that function; and (3) any employee of such a person who is authorised in writing by the authority for the purpose of giving such notices: ss 59(11), 61(4). The appropriate person may by regulations prescribe conditions to be satisfied by a person before a secondary authority may authorise him in writing for the purpose of giving notices: s 59(12). Before becoming an authorised officer of a parish council or other designated secondary authority in England, for the purposes of giving a notice of a fixed penalty under s 59, a person must successfully complete a course of training approved by the Secretary of State provided by a training provider recognised by the Secretary of State: Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007, SI 2007/175, reg 6. As to the meaning of 'appropriate person' see PARA 907 note 1. The condition to be satisfied by a person before a secondary authority in Wales may authorise that person in writing for the purpose of giving notices under the Clean Neighbourhoods and Environment Act 2005 s 59 is that the person must successfully complete a fixed penalty training course: Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2007, SI 2007/739, reg 4(c).

2 As to primary or secondary authorities see PARA 907 note 1.

3 As to dog control orders see PARA 907.

4 Clean Neighbourhoods and Environment Act 2005 s 59(1), (2). A fixed penalty is payable to the primary or secondary authority whose officer gave the notice: s 59(3). Authorities may use amounts paid to them pursuant to such fixed penalty notices only for certain specified functions: see ss 96-98; Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007, SI 2007/175, regs 4, 5 (England). The form of a fixed

penalty notice is to be such as the appropriate person may by order prescribe: Clean Neighbourhoods and Environment Act 2005 s 59(9).

5 Clean Neighbourhoods and Environment Act 2005 s 59(4).

6 Clean Neighbourhoods and Environment Act 2005 s 59(5).

7 Clean Neighbourhoods and Environment Act 2005 s 59(6). Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty, in cash or otherwise, to the person to whom the notice states the fixed penalty may be paid at the address at which the notice states the fixed penalty may be paid: s 59(7). Where a letter is sent in accordance with s 59(7) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post: s 59(8). In any proceedings a certificate which purports to be signed on behalf of the chief finance officer of a primary or secondary authority and states that payment of a fixed penalty was or was not received by a date specified in the certificate is evidence of the facts stated: s 59(10). 'Chief finance officer', in relation to a primary or secondary authority, means the person having responsibility for the financial affairs of the authority: s 59(11).

8 Clean Neighbourhoods and Environment Act 2005 s 60(1). A primary or secondary authority may specify different amounts in relation to different offences: s 60(2). The appropriate person may by order substitute a different amount for the amount payable where no amount is specified: s 60(6). A primary authority may use amounts paid to it in pursuance of notices under s 59 only for the purposes of qualifying functions of the authority (see s 96; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 156); the appropriate person must make provision relating to the use of such amounts by secondary authorities (see s 97; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 157).

9 Clean Neighbourhoods and Environment Act 2005 s 60(3). The appropriate person may by regulations make provision in connection with the powers conferred on primary and secondary authorities under s 60(1) and (3) which may, in particular, require an amount specified under s 60(1) to fall within a range prescribed in the regulations, or restrict the extent to which, and the circumstances in which, a primary or secondary authority can make provision under s 60(3): s 60(4), (5). The amount of a fixed penalty capable of being specified by a primary or secondary authority under s 60(1) must not be less than £50 and must not be more than £80 in England or £75 in Wales: Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007, SI 2007/175, reg 2(1)(d) (England); Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2007, SI 2007/739, reg 2(1)(d) (Wales). Where a primary or secondary authority makes provision for treating a fixed penalty as having been paid if a lesser amount is paid under the Clean Neighbourhoods and Environment Act 2005 s 60(3), such lesser amount must not be less than £50: Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007, SI 2007/175, reg 3(1)(d) (England); Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2007, SI 2007/739, reg 3(1)(d) (Wales).

10 Clean Neighbourhoods and Environment Act 2005 s 61(1).

11 Clean Neighbourhoods and Environment Act 2005 s 61(2). A person guilty of an offence under s 61(2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 61(3). As to the standard scale see PARA 738 note 1.

UPDATE

907-914 Power to make dog control orders ... Destruction orders otherwise than on a conviction

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

908 Dog control orders: fixed penalty notices

NOTES 1, 9--SI 2007/739 renamed the Environmental Offences (Use of Fixed Penalty Receipts) (Wales) Regulations 2007: SI 2008/663. SI 2007/739 regs 2-4 replaced by Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008, SI 2008/663.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/ (2) TRESPASS; CONTROL OF DOGS/909. Wearing of collars.

909. Wearing of collars.

Every dog while in a highway or place of public resort¹ must wear a collar with the name and address of the owner inscribed on it, or on a plate or badge attached thereto². This requirement does not apply to any pack of hounds³, to any dog while being used for sporting purposes, for the capture or destruction of vermin, for the driving or tending of cattle or sheep, any dog while being used on official duties by a member of the armed forces or Revenue and Customs or the police force for any area, any dog while being used in emergency rescue work, or any dog registered with the Guide Dogs for the Blind Association⁴.

If a dog is found in a highway or place of public resort without the prescribed collar it may be seized and treated as a stray dog⁵. The owner of the dog or the person in charge of it who, without lawful authority or excuse⁶, causes or permits the dog to be in a highway or place of public resort without the required collar, is guilty of an offence against the Animal Health Act 1981⁷.

1 A 'place of public resort' has been said to mean a place to which the public goes as a matter of fact as distinct from a matter of right: see *Kitson v Ashe* [1899] 1 QB 425 at 429, DC (a case on construction of a byelaw). A place may be a place of public resort notwithstanding that a charge is made for admission: *Glynn v Simmonds* [1952] 2 All ER 47 DC (a decision under the Vagrancy Act 1824 s 4); *Russell v Thompson* [1953] NI 51, CA (dance hall to which admission obtained by buying a ticket held to be place of public resort).

2 Control of Dogs Order 1992, SI 1992/901, art 2(1). The provisions of the order are to be executed and enforced by local authorities: art 5.

3 As to the exemption of a hound puppy out at walk see *Burton v Atkinson* (1908) 98 LT 748; *Rasdall v Coleman* (1909) 100 LT 934. As to hunting with hounds see further PARAS 1032-1039.

4 Control of Dogs Order 1992, SI 1992/901, art 2(2) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

5 Control of Dogs Order 1992, SI 1992/901, art 4; see PARA 925.

6 Proof of such lawful authority or excuse lies on the defendant: Control of Dogs Order 1992, SI 1992/901, art 3.

7 Control of Dogs Order 1992, SI 1992/901, art 3. As to the penalties for offences against the Animal Health Act 1981 see PARA 1101.

UPDATE

907-914 Power to make dog control orders ... Destruction orders otherwise than on a conviction

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/ (2) TRESPASS; CONTROL OF DOGS/910. Worrying of cattle, sheep and poultry.

910. Worrying of cattle, sheep and poultry.

Where a dog is proved to have injured cattle or poultry or chased sheep it may be dealt with as a dangerous dog¹.

¹ Dogs Act 1906 s 1(4) (amended by the Dogs (Amendment) Act 1928 s 1(1)); see PARA 911. For offences relating to worrying livestock on agricultural land see PARA 924. Cf dangerous dogs under the Dangerous Dogs Act 1991: PARA 912.

UPDATE

907-914 Power to make dog control orders ... Destruction orders otherwise than on a conviction

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(3) DANGEROUS DOGS/(i) Dangerous Dogs Generally/911. Dangerous dogs not under control.

(3) DANGEROUS DOGS

(i) Dangerous Dogs Generally

911. Dangerous dogs not under control.

On complaint made to a court of summary jurisdiction¹, the court may order that a dog which appears to it to be dangerous² and not kept under proper control³ be kept by the owner⁴ under proper control⁵ or destroyed, under penalty of a fine for every day during which the non-compliance continues⁶. Alternatively, if the dog is male and it appears to the court on such a complaint that the dog would be less dangerous if neutered, the court may order it to be neutered⁷. Notice of the penalty must be given to the owner⁸. Where a destruction order is made, the court may also appoint a person to undertake the destruction and require any person having custody of the dog to deliver it up for that purpose, and, if it thinks fit, make an order disqualifying the owner from having a dog for a specified period⁹.

A person who fails to comply with a destruction order or to deliver a dog up for destruction as ordered is guilty of an offence and on conviction, in addition to being liable to a fine, may be disqualified from having custody of a dog for a specified period¹⁰.

An order to destroy a dog may be made without giving the owner the option of keeping it under proper control¹¹. An order for destruction may be made although the dog has been moved out of the jurisdiction of the court after the offence, unless there has been a bona fide disposal of the dog by its owner¹², in which case an order may be made against the new owner¹³. If the owner fails to comply with an order to keep a dog under proper control, a fresh complaint may be made that it is dangerous or not under proper control and the court may order its destruction, but it cannot order destruction on a mere summons for non-compliance with the original order¹⁴.

An appeal lies to the Crown Court against any such order specified above¹⁵. Unless the owner of a dog which is ordered to be delivered up and destroyed gives notice to the court that he does not intend to appeal, the dog must not be destroyed pursuant to the order (1) until the end of the period within which notice of appeal can be given; and (2) if such notice is given within that period, until the appeal is determined or withdrawn¹⁶.

It is inadvisable for proceedings under the Dogs Act 1871 and any proceedings under the Dogs (Protection of Livestock) Act 1953¹⁷ to be heard together, the better practice being to dispose first of the criminal proceedings¹⁸.

1 The justices need not be those sitting for the commission area in which the dog has been dangerous or out of control: *Shufflebottom v Chief Constable of Greater Manchester* [2003] EWHC 246 (Admin), 167 JP 153, [2003] All ER (D) 83 (Feb).

2 'Dangerous' includes dangerous to animals, including other dogs: *Henderson v McKenzie* (1876) 3 R 623; *Williams v Richards* [1907] 2 KB 88; *Briscoe v Shattock* [1999] 1 WLR 432, DC. A dog may be dangerous under this provision even though it has been held under the Metropolitan Police Act 1839 s 54 (see PARA 912) not to be ferocious: *Kedde v Payn* [1964] 1 All ER 189, [1964] 1 WLR 262, DC. It is unnecessary to prove the owner's knowledge that the dog is dangerous before making an order: *Parker v Walsh* (1885) 1 TLR 583. Where a dog bit a child in circumstances consistent with the bite being accidental or, at least provoked, it was held that the isolated bite did not warrant an order under this provision (*Macdonald v Munro* 1951 JC 8); but it is open to the court to find that a dog is dangerous from a single and not particularly violent incident (*Lamb v Gorham* (1971) 115 Sol Jo 831). See also *Swale Borough Council v Boulter* [2002] All ER (D) 378 (Oct), Admin Ct; and note 6. As to dogs bred for fighting see PARA 912.

3 This is not confined to a public place but extends to the owner's private property where other people have the right of access: *Philp v Wright* 1940 JC 9. Whether a dog is under control or not is a question of fact, not of law: *Wren v Pocock* (1876) 40 JP 646; *R v Huntingdon Justices* (1879) 4 QBD 522; cf *Re Application for Mandamus, ex p Hay* (1866) 3 TLR 24. See also *R v Nottingham Justices, ex p Brown* [1960] 3 All ER 625, [1960] 1 WLR 1315; *Smith v Baker* [1960] 3 All ER 653, [1961] 1 WLR 38.

4 There is no reason to suppose that 'owner' here includes 'keeper'. Cf the extended meaning under the Animals Act 1971 s 6(3); see PARA 747.

5 The court may specify the method of control: see the Dangerous Dogs Act 1991 s 3(5)(b); note 6.

6 Dogs Act 1871 s 2 (amended by the Dangerous Dogs Act 1989 s 2(3)). The fine must not exceed level 3 on the standard scale: Dangerous Dogs Act 1989 s 1(3). As to the standard scale see PARA 738 note 1. An order may be made whether or not the dog is shown to have injured any person and may specify the measures to be taken for keeping the dog under proper control, whether by muzzling, keeping on a lead, excluding it from specified places or otherwise: Dangerous Dogs Act 1991 s 3(5). Where a dog is proved to have injured cattle or poultry or chased sheep it may be dealt with under the Dogs Act 1871 s 2 as a dangerous dog: Dogs Act 1906 s 1(4) (amended by the Dogs (Amendment) Act 1928 s 1). As to muzzling and keeping on a lead see PARA 912.

7 Dangerous Dogs Act 1991 s 3(6), which provides for such an order to be made under the Dogs Act 1871 s 2.

8 *Haldane v Allan* 1956 JC 41.

9 Dangerous Dogs Act 1989 s 1(1). An application may be made for termination of a disqualification order at any time after the end of the period of one year beginning with the date of the order: see s 1(4), (5). Where an application in respect of an order is refused no further application in respect of that order may be entertained if made before the end of the period of one year beginning with the date of the refusal: s 1(5). Any person who has custody of a dog in contravention of an order made under s 1(1)(b) or (3) (see text to note 10) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 1(6).

10 Dangerous Dogs Act 1989 s 1(3). This offence is punishable as described in the text and note 6. This includes any other order made by virtue of the Dogs Act 1871 s 2, but not in relation to an order made thereunder by virtue of the Dangerous Dogs Act 1991 s 3(6) (see note 7), where the matters arose before s 3(6) came into force (ie 12 August 1991): s 3(7).

11 *Pickering v Marsh* (1874) 43 LJMC 143; *R v Dymock, R v Moger* (1901) 17 TLR 593.

12 *Lockett v Withey* (1908) 99 LT 838; *R v Jones, ex p Daunton* [1963] 1 All ER 368, [1963] 1 WLR 270, DC. See also *Shufflebottom v Chief Constable of Greater Manchester* [2003] EWHC 246 (Admin), 167 JP 153, [2003] All ER (D) 83 (Feb).

13 *R v Leicester Justices, ex p Workman* [1964] 2 All ER 346, [1964] 1 WLR 707, DC.

14 *Rhodes v Heritage* [1951] 1 All ER 904, DC.

15 Ie any order made under the Dogs Act 1871 s 2 or under the Dangerous Dogs Act 1989 s 1(1): Dangerous Dogs Act 1989 s 1(2).

16 Dangerous Dogs Act 1989 s 1(2).

17 See PARA 924.

18 *R v Dunmow Justices, ex p Anderson* [1964] 2 All ER 943, [1964] 1 WLR 1039, DC.

UPDATE

907-914 Power to make dog control orders ... Destruction orders otherwise than on a conviction

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(3) DANGEROUS DOGS/(i) Dangerous Dogs Generally/912. Ferocious dog at large; fighting dogs.

912. Ferocious dog at large; fighting dogs.

It is an offence to suffer to be at large¹ any unmuzzled ferocious² dog, or to set on or urge any dog or other animal to attack, worry or put in fear any person, horse or other animal in any thoroughfare or public place in the metropolitan police district³, or in any street in a town to which the Town Police Clauses Act 1847 applies⁴; on summary conviction the penalty is, in relation to the metropolitan police district, a fine not exceeding level 2 on the standard scale⁵, and elsewhere a fine not exceeding level 3 on the standard scale⁶.

It is prohibited to breed or breed from, give, sell, exchange, or offer, advertise⁷ or expose for sale, exchange or gift, any dog of the type known as pit bull terrier⁸, or of the type known as Japanese tosa or other dog of a type which is bred for fighting or which has the characteristics of a dog so bred⁹. It is also an offence for a person to allow such a dog of which he is owner¹⁰ or for the time being in charge to be in a public place¹¹ without being muzzled and kept on a lead¹², or to abandon it or allow it to stray¹³. It is an offence for a person to have such a dog in his possession or custody, except under a power of seizure or in accordance with an order for its destruction¹⁴, or in accordance with exemptions permitted by the Secretary of State¹⁵. Contravention of these provisions is an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale, or imprisonment for up to six months, or both¹⁶.

The Secretary of State or the Welsh Ministers may by order made by statutory instrument make provision corresponding to any or all of the above provisions relating to muzzles, leads, abandonment and allowing to stray, with modifications, to other types of dog which he considers present a serious danger to the public¹⁷.

The owner¹⁸ or, if different, the person for the time being in charge¹⁹ of a dog which is dangerously out of control²⁰ in a public place is guilty of an offence; if the dog injures any person while it is out of control, the owner or person in charge is guilty of an aggravated offence²¹. If the owner or person for the time being in charge of a dog allows it to enter a place which is not a public place but where it is not permitted to be, and while there it injures any person or there are reasonable grounds for apprehension that it will do so, the owner or person in charge is guilty of an offence, and, if the dog injures any person, of an aggravated offence²².

Where a person is convicted of an offence relating to prohibited fighting dogs, other specified dangerous dogs or dogs dangerously out of control²³, the court may, and in certain circumstances must, order the destruction of the dog²⁴. The offender may be disqualified, for such period as the court thinks fit, from having custody of a dog²⁵. A constable or an officer of the local authority authorised for these purposes may seize any prohibited fighting dog or other designated specially dangerous dog in respect of which an offence²⁶ is being committed, or any dog in a public place which appears to him to be dangerously out of control²⁷. A constable may, with a warrant, enter and search premises and seize any dog or other thing which is evidence of an offence against these provisions²⁸.

1 A dog on a lead is not 'at large': *Ross v Evans* [1959] 2 QB 79, [1959] 2 All ER 222, DC.

2 There is a distinction between a dangerous dog and a ferocious one: *Kedde v Payn* [1964] 1 All ER 189, [1964] 1 WLR 262, DC; and see PARA 911 note 2.

3 As to this district see the London Government Act 1963 s 76; and **POLICE** vol 36(1) (2007 Reissue) PARA 137.

4 I.e. any street, road, square, court, alley, thoroughfare or public passage within the limits of any special Act for the improvement or regulation of a town or district, being an Act with which the Town Police Clauses Act

1847 is incorporated: ss 2, 3 (s 3 amended by the Statute Law Reform Act 1891; the Courts Act 1971 s 56(4), Sch 11; and the Statute Law (Repeals) Act 1993).

5 Metropolitan Police Act 1839 s 54 (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 738 note 1.

6 Town Police Clauses Act 1847 s 28 (amended by the Criminal Justice Act 1982 ss 39, 46, Sch 3). Alternatively, in the discretion of the justice before whom he is convicted, an offender may be committed to prison for a period not exceeding 14 days: Town Police Clauses Act 1847 s 28. As from a day to be appointed, the alternative of imprisonment is removed: s 28 (prospectively amended by the Criminal Justice Act 2003 ss 304, 332, Sch 32 Pt 2 para 149, Sch 37 Pt 9). At the date at which this volume states the law, no such day had been appointed.

7 As to advertisements see note 16.

8 As to the determination of a dog as being 'of the type known as pit bull terrier' see *R v Crown Court at Knightsbridge, ex p Dunne* [1993] 4 All ER 491, [1994] 1 WLR 296, DC ('type' is not the same as 'breed'), approving *Parker v Annan* 1994 SLT 675, High Ct of Justiciary.

9 Dangerous Dogs Act 1991 s 1(1), (2)(a)-(c). Dogs in the third category are designated by the Secretary of State: s 1(1)(c), (8). See the Dangerous Dogs (Designated Types) Order 1991, SI 1991/1743, which specifies dogs of the types *Dogo Argentino* and *Fila Brasileiro*. The prohibition as to sale, exchange etc does not render unlawful anything done with a view to removing the dog from the United Kingdom: Dangerous Dogs Act 1991 s 1(4).

If in any proceedings it is alleged by the prosecution that the dog is one to which s 1 applies, it is presumed that it is such a dog unless the contrary is shown by the accused, having given the prosecution at least 14 days' notice of the evidence he intends to adduce in that regard: s 5(5).

10 Where a dog is owned by a person who is less than 16 years old, the reference to 'owner' includes a reference to the head of the household, if any, of which that person is a member: Dangerous Dogs Act 1991 s 6.

11 'Public place' means any street, road or other place, enclosed or not, to which the public have access for payment or otherwise and includes the common parts of a building containing two or more separate dwellings: Dangerous Dogs Act 1991 s 10(2). If an area is publicly owned and open for public use, it can be inferred that it is a public place and evidence of public user is not necessary: *Cummings v DPP* (1999) 143 Sol Jo LB 112, DC. The inside of a motor car may be a public place where the car itself is in a public place: *Bates v DPP* (1993) 157 JP 1004, DC. See also *Fellowes v DPP* (1993) 157 JP 936, DC (defendant's garden path not a public place); *McGeachy v Normand* 1994 SLT 429, High Ct of Justiciary (insufficient evidence to establish that the garden area of block of houses was a public place). The phrase 'have or are permitted to have' access does not mean that any place that a member of the public can physically access is a public place, however obviously private it might be: *R v Bogdal* [2008] EWCA Crim 1, 172 JP 178, [2008] All ER (D) 44 (Jan) (shared driveway not a public place).

12 'Muzzled' means securely fitted with a muzzle sufficient to prevent the dog biting any person: Dangerous Dogs Act 1991 s 7(1)(a). 'Kept on a lead' means securely held in that manner by a person who is not less than 16 years old: s 7(1)(b). The Secretary of State or the Welsh Ministers may by order made by statutory instrument prescribe kinds of muzzle or lead, in which case a reference to 'muzzle' or 'lead' is to the muzzle or lead so prescribed: s 7(2), (3). At the date at which this volume states the law, no such order had been made. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

Voluntary intoxication is not a defence to the offence of allowing a dog to be in a public place without being muzzled or kept on a lead: *DPP v Kellet* (1994) 158 JP 1138, DC. See also *R v Liverpool Magistrates' Court, ex p Slade* [1998] 1 All ER 60, [1998] 1 WLR 531, DC (where police allowed a defendant who had been acquitted of an offence under the Dangerous Dogs Act 1991 s 1 to take the dog from the police station into a public place without being muzzled, a fresh information laid against the defendant was an abuse of process).

13 Dangerous Dogs Act 1991 s 1(2)(d), (e); and see note 12.

14 Dangerous Dogs Act 1991 s 1(3)(a), (b). As to the compensation paid in respect of dogs whose owners arranged for their destruction before 30 November 1991 see the Dangerous Dogs Compensation and Exemption Schemes Order 1991, SI 1991/1744, art 2.

15 Dangerous Dogs Act 1991 s 1(5). See the Dangerous Dogs Compensation and Exemption Schemes Order 1991, SI 1991/1744, arts 3-10 (variously amended by SI 1991/2297; and SI 1991/2636). Under the scheme comprised in those provisions, possession or custody of a dog is not prohibited in relation to dogs born before 30 November 1991 (see the Dangerous Dogs Compensation and Exemption Schemes Order 1991, SI 1991/1744, arts 3, 1(2)(c); and the Dangerous Dogs Act 1991 (Commencement and Appointed Day) Order 1991, SI 1991/1742, art 2), where certain conditions are complied with. Those conditions relate to (1) reporting

to the police (Dangerous Dogs Compensation and Exemption Schemes Order 1991, SI 1991/1744, art 6); (2) neutering and identification (art 7); (3) third party insurance (art 8); and (4) the certificate of exemption (arts 9, 10). The conditions vary slightly according to whether the dog is an adult dog (art 4) or a puppy (art 5). The administration of the scheme, and of that referred to in text and note 14, is conducted by an agency for the time being designated by the Secretary of State: arts 1(2)(b), 11; Dangerous Dogs Act 1991 s 1(6). See also *R v Metropolitan Police and the Index of Exempted Dogs, ex p Wheeler* [1993] Crim LR 942, DC. The Dangerous Dogs Compensation and Exemption Schemes Order 1991, SI 1991/1744, is extended where a contingent destruction order has been made, or an order for destruction has been made other than on conviction of an offence: see the Dangerous Dogs Act (Amendment) Act 1997 s 4(1); and PARAS 913-914.

16 Dangerous Dogs Act 1991 s 1(7). However, a person who publishes an advertisement (see text and note 7) is not liable to imprisonment if he shows that he did so to the order of someone else and did not himself devise it, and is not liable to conviction if he additionally shows that he neither knew nor reasonably suspected that it related to a restricted dog: s 1(7). 'Advertisement' includes any means of bringing a matter to the attention of the public; 'advertise' must be construed accordingly: s 10(2).

17 Dangerous Dogs Act 1991 s 2(1), (5). Such orders may contain exceptions and may create summary offences punishable as described in the text and note 16: s 2(2), (3). Before making such an order the Secretary of State or the Welsh Ministers must consult persons and bodies having relevant knowledge or experience, including bodies concerned respectively with animal welfare, veterinary science and practice and breeds of dogs: s 2(4).

If in any proceedings it is alleged by the prosecution that the dog is one to which an order under s 2 applies it is presumed to be such a dog unless the contrary is shown by the accused, having given the prosecution at least 14 days' notice of the evidence he intends to adduce in that regard: s 5(5).

18 See the Dangerous Dogs Act 1991 s 6; and note 10.

19 It is a defence for an owner to show that the dog was in the charge of a person whom he reasonably believed to be a fit and proper person: Dangerous Dogs Act 1991 s 3(2). Clear evidence of transfer of charge of the dog is needed: *R v Huddart* [1999] Crim LR 568, CA (no such transfer where the appellant's wife had let the dog into the garden). It seems that the fact that a dog is out of control does not mean that no one is in charge of it for the purposes of this defence: *Swinlay v Crowe* 1995 SLT 34, High Ct of Justiciary.

20 A dog is regarded as dangerously out of control on any occasion on which there are grounds for reasonable apprehension that it will cause injury to any person, whether or not it does so, except where the dog is being used for a lawful purpose by a constable or person in the service of the Crown: Dangerous Dogs Act 1991 s 10(3). The act of a dog causing injury to a person is itself conduct giving grounds for reasonable apprehension of injury; there is no requirement for the apprehension to precede the injury: *Rafiq v DPP* (1997) 161 JP 412, DC. Cf PARA 911.

21 Dangerous Dogs Act 1991 s 3(1). A person guilty of the offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for up to six months, or both; the aggravated offence is punishable on summary conviction by a fine not exceeding the statutory maximum or imprisonment for up to six months, or both, and on conviction on indictment, by a fine or imprisonment for up to two years, or both: s 3(4). As to the statutory maximum see PARA 877 note 6. An offence under s 3(1) is one of strict liability: *R v Bezzina, R v Codling, R v Elvin* [1994] 3 All ER 964, [1994] 1 WLR 1057, CA. As to sentencing for the aggravated offence see *R v Cox (Jacqueline)* [2004] EWCA Crim 282, [2004] 2 Cr App Rep (S) 287, [2004] All ER (D) 63 (May) (three months' imprisonment and disqualification for ten years from keeping dogs).

22 Dangerous Dogs Act 1991 s 3(3). The offence and aggravated offence are punishable as described in note 21. See also note 10. For these purposes it does not have to be shown that a defendant intentionally took positive steps to allow the dog to enter the place in question because the word 'allows' includes omitting to take a positive step: *Greener v DPP* (1996) 160 JP 265, DC.

23 Is an offence under the Dangerous Dogs Act 1991 ss 1, 3(1) or (3), or under an order made by virtue of s 2: see text and notes 7-21.

24 Dangerous Dogs Act 1991 s 4(1)(a) (amended by the Dangerous Dogs (Amendment) Act 1997 s 1(1)). The court is not required to order destruction where it is satisfied that (1) the dog does not constitute a danger to public safety; and (2) if the dog was born before 30 November 1991, and is subject to the prohibition under the Dangerous Dogs Act 1991 s 1(3) (see note 14), there is a good reason why the dog has not been exempted from that prohibition: s 4(1A) (added by the Dangerous Dogs (Amendment) Act 1997 s 1(2)).

Subject to the above the court must make such an order where the offence is under the Dangerous Dogs Act 1991 s 1 or is an aggravated offence under s 3(1) or (3): s 4(1)(a) (as so amended). The owner, if he is not the offender, may appeal against it to the Crown Court: s 4(2) (amended by the Dangerous Dogs Act 1997 s 1(3)). Destruction must not take place until after any appeal against the conviction or order is determined, or the time for appealing has elapsed, or the owner or offender has given notice that there will be no appeal: Dangerous

Dogs Act 1991 s 4(3) (amended by the Dangerous Dogs Act 1997 s 1(3)). The court may appoint a person to undertake the destruction of the dog and require that the dog be given up to that person, and may order the offender to pay the expenses of destroying the dog and keeping it before destruction (Dangerous Dogs Act 1991 s 4(4)); such sum is treated as if it were a fine imposed on conviction (s 4(5)). Failure to comply with an order to give up the dog for destruction is an offence punishable on summary conviction with a fine not exceeding level 5 on the standard scale: s 4(8)(b).

The owner of the dog should be notified of the hearing, and given an opportunity to be heard: *R v Trafford Magistrates' Court, ex p Riley* (1995) 160 JP 418, DC; *R v Ealing Magistrates' Court, ex p Fanneran* (1996) 160 JP 409, DC.

25 Dangerous Dogs Act 1991 s 4(1)(b). Custody of a dog in contravention of a disqualification order is an offence punishable on summary conviction with a fine not exceeding level 5 on the standard scale: s 4(8)(a). A person may apply after at least one year for the termination of the disqualification, whereupon the court may grant or refuse the application, having regard to the applicant's character and conduct and other circumstances since the disqualification; if the application is refused, no further application may be made within one year after that refusal: s 4(6), (7) (s 4(6) amended by the Courts Act 2003 s 109(1), Sch 8 para 353).

26 It is an offence against the Dangerous Dogs Act 1991 ss 1, 2; see text and notes 7-17.

27 Dangerous Dogs Act 1991 s 5(1).

28 Dangerous Dogs Act 1991 s 5(2).

UPDATE

907-914 Power to make dog control orders ... Destruction orders otherwise than on a conviction

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

912 Ferocious dog at large; fighting dogs

NOTE 19--Whether a person remains in physical charge of a dog is a question of fact and degree; there is no reason in principle why a short and temporary transfer of actual physical control to another should prevent a person from remaining in charge of a dog: *L v Crown Prosecution Service* [2010] EWHC 341 (Admin), (2010) 174 JP 209, DC.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(3) DANGEROUS DOGS/(i) Dangerous Dogs Generally/913. Contingent destruction orders.

913. Contingent destruction orders.

The court has the power to make contingent destruction orders¹. Where:

- 107 (1) a person is convicted of an offence relating to prohibited fighting dogs, other specified dangerous dogs or dogs dangerously out of control²;
- 108 (2) the court does not order the destruction of the dog³; and
- 109 (3) in the case of an offence relating to fighting dogs, the dog is subject to the prohibition on possession of the dog⁴,

the court must order that unless the dog is exempted from that prohibition within the requisite period⁵, it must be destroyed⁶.

Where a person is convicted of an offence concerning specified dangerous dogs or dogs dangerously out of control⁷ the court may order that, unless the owner of the dog keeps it under proper control, the dog must be destroyed⁸.

1 See the Dangerous Dogs Act 1991 s 4A (added by the Dangerous Dogs (Amendment) Act 1997 s 2).

2 ie an offence under the Dangerous Dogs Act 1991 s 1, s 3(1) or (3); see PARA 912.

3 ie under the Dangerous Dogs Act 1991 s 4(1)(a); see PARA 912 text and note 24. Section 4(2)-(4) (see PARA 912 note 24) applies in relation to an order under s 4A(1) or (4) as if it were an order made under s 4(1)(a): s 4A(6) (as added: see note 1). The Dangerous Dogs Compensation and Exemption Schemes Order 1991, SI 1991/1744, Pt III (amended by SI 1991/2297) is extended to cover orders made under the Dangerous Dogs Act 1991 s 4A(1): see the Dangerous Dogs (Amendment) Act 1997 s 4(1); and the Dangerous Dogs (Fees) Order 1997, SI 1997/1152.

4 ie under the Dangerous Dogs Act 1991 s 1(3).

5 Where an order is made under the Dangerous Dogs Act 1991 s 4(1) in respect of a dog, and the dog is not exempted from the prohibition in s 1(3) within the requisite period, the court may extend that period: s 4A(2) (as added: see note 1). The requisite period for the purposes of such an order is the period of two months beginning with the date of the order: s 4A(3) (as so added).

6 Dangerous Dogs Act 1991 s 4A(1) (as added: see note 1).

7 ie an offence under the Dangerous Dogs Act 1991 s 3(1) or (3).

8 Dangerous Dogs Act 1991 s 4A(4) (as added: see note 1). Such an order (1) may specify the measures to be taken for keeping the dog under proper control, whether muzzling, keeping on a lead, excluding it from specified places or otherwise; and (2) if it appears to the court that the dog is a male and would be less dangerous if neutered, may require it to be neutered: s 4A(5) (as so added). Section 4A(6) (as so added) applies to orders under s 4A(4): see note 3.

UPDATE

907-914 Power to make dog control orders ... Destruction orders otherwise than on a conviction

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(3) DANGEROUS DOGS/(i) Dangerous Dogs Generally/914. Destruction orders otherwise than on a conviction.

914. Destruction orders otherwise than on a conviction.

Where a dog is seized¹, and it appears to a justice of the peace:

- 110 (1) that no person has been or is to be prosecuted for an offence under the Dangerous Dogs Act 1991, or under an order made under that Act² in respect of that dog, whether because the owner cannot be found or for any other reason³; or
- 111 (2) that the dog cannot be released into the custody or possession of its owner without the owner contravening the prohibition on possession of dogs bred for fighting⁴,

he may order the destruction of the dog⁵.

1 He under the powers described in the Dangerous Dogs Act 1991 s 5(1) or (2); see PARA 912.

2 He under the Dangerous Dogs Act 1991 s 2; see PARA 912 text and note 17.

3 Dangerous Dogs Act 1991 s 4B(1)(a) (s 4B added by the Dangerous Dogs (Amendment) Act 1997 s 3).

See also *R v Walton Street Justices, ex p Crothers* [1992] Crim LR 875, 157 JP 171 (and further proceedings (1994) 160 JP 427, DC); *R v Haringey Magistrates' Court, ex p Cragg* (1996) 161 JP 61 (decided under the Dangerous Dogs Act 1991 s 5(4) (repealed, and replaced by these provisions)).

4 Dangerous Dogs Act 1991 s 4B(1)(b) (as added: see note 3). The prohibition referred to is that set out in s 1(3); see PARA 912 text and note 14.

Nothing in s 4B(1)(b) (head (2) in the text) requires the justice to order the destruction of a dog if he is satisfied (1) that the dog will not constitute a danger to public safety; and (2) where the dog was born before 30 November 1991 and is subject to the prohibition in s 1(3), that there is a good reason why the dog has not been exempted from that prohibition: s 4B(2) (as so added). Where in a case falling within s 4B(1)(b) the justice does not order the destruction of the dog, he must order that, unless the dog is exempted from the prohibition in s 1(3) within the requisite period, the dog must be destroyed: s 4B(3) (as so added). Section 4(2)-(4) (see PARA 912 text and note 24) applies to an order under s 4B(1)(b) or (3) as it applies in relation to an order under s 4(1) (a): s 4B(4) (as so added). Section 4A(2)-(3) (see PARA 913) applies in relation to an order under s 4B(3) as it applies in relation to an order under s 4B(1), except that the reference to the court in s 4A(2) must be construed as a reference to the justice: s 4B(5) (as so added).

5 Dangerous Dogs Act 1991 s 4B(1) (as added: see note 3). Subject to s 4B(2) (as so added) (see note 4), the destruction of the dog must be ordered, if it is one to which s 1 applies: s 4B(1) (as so added).

The Dangerous Dogs Compensation and Exemption Schemes Order 1991, SI 1991/1744, Pt III (amended by SI 1991/2297) is extended to cover orders made under the Dangerous Dogs Act 1991 s 4B(3): see the Dangerous Dogs (Amendment) Act 1997 s 4(1); and the Dangerous Dogs (Fees) Order 1997, SI 1997/1152.

UPDATE

907-914 Power to make dog control orders ... Destruction orders otherwise than on a conviction

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(3) DANGEROUS DOGS/(ii) Guard Dogs/915. Control of guard dogs.

(ii) Guard Dogs

915. Control of guard dogs.

A person must not use or permit the use of a guard dog¹ at any premises² unless a handler capable of controlling it is present on the premises and the dog is under his control at all times while it is being so used, except while it is secured so that it is not at liberty to go freely about the premises³.

The handler of a guard dog must keep it under his control at all times while it is being used as a guard dog at any premises except while another handler has control of it or while it is secured as described above⁴. The use of a guard dog at any premises is unlawful unless a notice that a guard dog is present is clearly exhibited at each entrance to the premises⁵.

1 le a dog which is being used to protect (1) premises; (2) property kept on the premises; or (3) a person guarding such premises or property: Guard Dogs Act 1975 s 7.

2 le land other than agricultural land and land within the curtilage of a dwelling house, and buildings, including parts of buildings, other than dwelling houses: Guard Dogs Act 1975 s 7. 'Agricultural land' has the same meaning as in the Dogs (Protection of Livestock) Act 1953 (see PARA 924 note 2): Guard Dogs Act 1975 s 7.

3 Guard Dogs Act 1975 s 1(1). See *Hobson v Gledhill* [1978] 1 All ER 945, [1978] 1 WLR 215, DC.

4 Guard Dogs Act 1975 s 1(2).

5 Guard Dogs Act 1975 s 1(3).

UPDATE

915-919 Guard Dogs

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(3) DANGEROUS DOGS/(ii) Guard Dogs/916. Licence to keep a guard dog.

916. Licence to keep a guard dog.

A person must not keep a dog at guard dog kennels¹ unless he holds a licence² in respect of the kennels³, and must not use or permit the use at any premises⁴ of a guard dog⁵ if he knows or has reasonable cause to suspect that, when not being used as a guard dog, it is normally kept at guard dog kennels in breach of this provision⁶.

These provisions are not yet in force⁷.

1 A place where a person in the course of business keeps a dog which, notwithstanding that it is used for other purposes, is used as a guard dog elsewhere, other than a dog used as a guard dog only at premises belonging to its owner: Guard Dogs Act 1975 s 7.

2 A licence under the Guard Dogs Act 1975 s 3; see PARA 917.

3 Guard Dogs Act 1975 s 2(1).

4 As to the meaning of 'premises' see PARA 915 note 2.

5 As to the meaning of 'guard dog' see PARA 915 note 1.

6 Guard Dogs Act 1975 s 2(2).

7 The Guard Dogs Act 1975 (Commencement No 1) Order 1975, SI 1975/1767, did not bring this section into force, and at the date at which this volume states the law, no day had been appointed for this purpose.

UPDATE

915-919 Guard Dogs

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(3) DANGEROUS DOGS/(ii) Guard Dogs/917. Guard dog kennel licences.

917. Guard dog kennel licences.

A local authority¹ may, on the application² of a person who runs or intends to run guard dog kennels³ at premises within its area, grant that person a licence in respect of those kennels⁴. A licence must be subject to conditions prescribed by regulations and to such other conditions as the local authority thinks fit⁵. It remains in force for 12 months unless cancelled by a court in certain circumstances⁶.

Regulations may be made enabling a local authority to revoke a licence and, on application by the holder, to vary certain of its conditions⁷. They may also provide for the continuance or transfer of a licence where an appeal is made and on the death of the holder⁸.

These provisions are not yet in force⁹.

1 In relation to England, a district council, London borough council and the Common Council of the City of London, and in relation to Wales, a county council or county borough council: Guard Dogs Act 1975 s 7 (definition amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 46, Sch 18). For the purposes of the Guard Dogs Act 1975, the Inner and Middle Temples are deemed to be in the City of London: s 3(6).

2 Application must be in the prescribed form and accompanied by the prescribed fee: Guard Dogs Act 1975 s 3(1). Regulations may require payment of a prescribed fee on inspection by the local authority of premises the subject of an application: s 6(1)(b).

3 As to guard dog kennels see PARA 916 note 1.

4 Guard Dogs Act 1975 s 3(1).

5 Guard Dogs Act 1975 s 3(2).

6 Guard Dogs Act 1975 s 3(3). Cancellation may follow a conviction under the Guard Dogs Act 1975, the Protection of Animals Act 1911, the Pet Animals Act 1951, the Animal Boarding Establishments Act 1963 or the Breeding of Dogs Act 1973, or under the Animal Welfare Act 2006 s 4, 5, 6(1), (2), 7-9 or 11: Guard Dogs Act 1975 s 3(4) (amended by the Animal Welfare Act 2006 s 64, Sch 3 para 8). The court may suspend the cancellation pending an appeal: s 3(5).

7 Guard Dogs Act 1975 s 6(1)(a). Conditions which may be varied are those other than conditions prescribed by the regulations.

8 Guard Dogs Act 1975 s 6(1)(c). As to appeals see PARA 918.

9 See PARA 916 note 7.

UPDATE

915-919 Guard Dogs

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

917 Guard dog kennel licences

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(3) DANGEROUS DOGS/(ii) Guard Dogs/918. Appeals.

918. Appeals.

An appeal will lie to a magistrates' court against the refusal by a local authority¹ to grant a licence; against certain conditions² to which a licence is subject; against the authority's refusal to vary the conditions; and against the revocation of a licence³.

On appeal, the court may, if it thinks fit, give directions to the local authority with respect to the licence or to the conditions, and the local authority must comply⁴.

These provisions are not yet in force⁵.

1 As to the meaning of 'local authority' see PARA 917 note 1.

2 The conditions other than the prescribed conditions: Guard Dogs Act 1975 s 4(1)(b). As to the prescribed conditions see s 3.

3 Guard Dogs Act 1975 s 4(1).

4 Guard Dogs Act 1975 s 4(2).

5 See PARA 916 note 7.

UPDATE

915-919 Guard Dogs

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(3) DANGEROUS DOGS/(ii) Guard Dogs/919. Offences, penalties and civil liability.

919. Offences, penalties and civil liability.

A person who contravenes the provisions of the Guard Dogs Act 1975 relating to the control of guard dogs¹ or restricting their keeping without a licence² is guilty of an offence³.

Contravention of the Act or of regulations made under it or of the terms or conditions of a licence does not give rise to civil liability, nor does it derogate from it⁴.

These provisions are in force except in so far as they relate to the licensing scheme⁵.

1 Ie the Guard Dogs Act 1975 s 1; see PARA 915.

2 Ie the Guard Dogs Act 1975 s 2; see PARA 916.

3 Guard Dogs Act 1975 s 5(1). The penalty on summary conviction is a fine not exceeding level 5 on the standard scale: s 5(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 738 note 1.

4 Guard Dogs Act 1975 s 5(2).

5 See PARA 916 note 7.

UPDATE

915-919 Guard Dogs

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(4) INJURY TO HUMAN BEINGS/920. Civil liability for injuries to human beings.

(4) INJURY TO HUMAN BEINGS

920. Civil liability for injuries to human beings.

Dogs belong to a non-dangerous species for the purpose of deciding questions of liability for any injuries to human beings caused by them, since they are domesticated in the British Islands¹. The same tests and considerations for determining such questions apply to dogs as to other non-dangerous species of animals, and accordingly the general principles involved are dealt with elsewhere in this title².

1 See the Animals Act 1971 ss 2(2), 6(2). As to the meaning of 'British Islands' see PARA 747 note 5.

2 See PARA 747 et seq.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(5) INJURY TO LIVESTOCK/921. Civil liability for injury to livestock.

(5) INJURY TO LIVESTOCK

921. Civil liability for injury to livestock.

Any person who keeps a dog¹ which causes damage by killing or injuring² livestock³ is absolutely liable for the damage, subject to certain specified statutory defences⁴. In law a person is the keeper of an animal if he either owns it or has it in his possession, or is the head of a household of which a member under 16 owns the animal or has it in his possession⁵. Moreover, a person remains in law the keeper of an animal until someone else fulfilling these qualifications succeeds him⁶, but a person who takes possession of an animal to prevent it causing damage or to restore it to its owner does not, by virtue only of that possession, become its keeper⁷.

1 Where damage is caused by two or more dogs acting together, each dog in law occasions the whole of the damage and consequently the keeper of each will be responsible for the whole: *Arneil v Paterson* [1931] AC 560, HL, commenting on *Piper v Winniffrith and Leppard* [1917] WN 358.

2 As to injury see *Campbell v Wilkinson* (1909) 43 ILT 237 (dog barking at foals which injured themselves); and *Ives v Brewer* (1951) 95 Sol Jo 286 (poultry ceasing laying as a result of shock).

3 'Livestock' for this purpose means cattle, horses, asses, mules, hinnies, sheep, pigs, goats, poultry, deer not in a wild state, and also, while in captivity, pheasants, partridges and grouse; and 'poultry' means the domestic varieties of fowls, turkeys, geese, ducks, guinea-fowls, pigeons, peacocks and quails: Animals Act 1971 s 11.

4 Animals Act 1971 s 3. For these defences see PARA 922. As to the offence of worrying livestock on agricultural land see PARA 924.

5 Animals Act 1971 s 6(3).

6 Animals Act 1971 s 6(3).

7 Animals Act 1971 s 6(4). Eg the position of rescue societies and shelters.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(5) INJURY TO LIVESTOCK/922. Exceptions to liability.

922. Exceptions to liability.

A person deemed in law to be the keeper¹ of a dog will not be liable for any damage it causes to livestock² if such damage is due wholly to the fault of the person whose livestock it is³; or if the livestock was killed or injured on land on to which it has strayed and either the dog belonged to the occupier of that land or its presence on that land was authorised by him⁴.

1 As to the meaning of 'keeper' see PARA 921.

2 As to the meaning of 'livestock' see PARA 921 note 3.

3 Animals Act 1971 s 5(1).

4 Animals Act 1971 s 5(4). The 'belonging' or the presence of the dog clearly covers the various possibilities included in the meaning of 'keeper' in s 6(3).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(5) INJURY TO LIVESTOCK/923. Unburied carcasses of cattle.

923. Unburied carcasses of cattle.

Any person who knowingly¹ and without reasonable excuse permits the carcase of any head of cattle² belonging to him or under his control to remain unburied in a field or other place to which dogs can gain access, is liable on summary conviction to a fine not exceeding level 1 on the standard scale³.

1 As to the meaning of 'knowingly' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 8.

2 'Cattle' includes horses, mules, asses, sheep, goats and swine: Dogs Act 1906 s 7.

3 Dogs Act 1906 s 6 (amended by the Dogs (Amendment) Act 1928 s 3; the Criminal Justice Act 1967 s 92(1), Sch 3 Pt I; and by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 738 note 1. The object of this provision is to prevent the owners of cattle, who have a remedy for injury done to their cattle by dogs (see PARA 921), from encouraging in dogs the propensity to trespass, by leaving carcasses in places which are accessible to dogs.

UPDATE

923-924 Unburied carcasses of cattle, Worrying livestock on agricultural land

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(5) INJURY TO LIVESTOCK/924. Worrying livestock on agricultural land.

924. Worrying livestock on agricultural land.

Subject to certain exceptions, if a dog worries livestock¹ on any agricultural land², the owner of the dog and, if it is in the charge of anyone other than its owner, that person also, is guilty of an offence³ punishable on summary conviction by a fine not exceeding level 3 on the standard scale⁴. 'Worrying livestock' means (1) attacking livestock; or (2) chasing it⁵ in such a way as may be reasonably expected to cause it injury⁶ or suffering, or, in the case of females, abortion or loss of or diminution in their produce; or (3) being at large, that is not on a leash or under close control, in a field or enclosure where there are sheep⁷.

The owner of a dog is not to be convicted of this offence if he proves⁸ that at the material time the dog was in the charge of some other person whom he reasonably believed to be a fit and proper person to be in charge of the dog⁹. Nor is a person guilty of the offence if at the material time the livestock were trespassing¹⁰ on the land in question and the dog was owned by, or in the charge of, the occupier of that land or a person authorised by him, except in a case where that person causes¹¹ the dog to attack the livestock¹².

Proceedings in respect of such an offence cannot be brought except by or with the consent of the chief officer of police for the area where the land is situated, or by the occupier of the land or the owner of any of the livestock¹³. Where a police officer reasonably believes¹⁴ that a dog found on any land has been worrying livestock there and the land appears to him to be agricultural land, and no person is present who admits to being the owner of the dog or in charge of it, then, in order to ascertain its owner, the officer may seize the dog and detain it until the owner has claimed it and paid all expenses incurred by its detention¹⁵.

Further, a justice of the peace may issue a warrant authorising the entry and search of premises if satisfied upon application by a constable that there are reasonable grounds for believing that an offence under the Dogs (Protection of Livestock) Act 1953 has been committed and that the dog involved is on those premises¹⁶.

There are restrictions on taking dogs onto access land, or allowing them to remain there, where they are in the vicinity of livestock¹⁷.

1 'Livestock' for this purpose means cattle, sheep, goats, swine, horses or poultry; 'cattle' means bulls, cows, oxen, heifers or calves; 'horses' includes asses and mules; and 'poultry' means domestic fowls, turkeys, geese or ducks: Dogs (Protection of Livestock) Act 1953 s 3(1). This is not quite such a wide definition as that under the Animals Act 1971 s 11 (see PARA 921 note 3). Rabbits are not included, even if kept commercially: see *Tallents v Bell and Goddard* [1944] 2 All ER 474, CA.

2 'Agricultural land' means land used as arable, meadow or grazing land, or for the purpose of poultry or pig farming, market gardens, allotments, nursery grounds or orchards: Dogs (Protection of Livestock) Act 1953 s 3(1). In *Williams v Richards* (1970) 114 Sol Jo 864, a cricket field on which sheep were grazing was held to be agricultural land. The Secretary of State or the Welsh Ministers may by order made by statutory instrument exempt land consisting wholly or mainly of mountain, hill, moor, heath or down land: Dogs (Protection of Livestock) Act 1953 ss 1(5), 3(2), (3); Transfer of Functions (Ministry of Food) Order 1955, SI 1955/554. Such orders, being local in application, are not noted in this work. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

3 Dogs (Protection of Livestock) Act 1953 s 1(1).

4 Dogs (Protection of Livestock) Act 1953 s 1(6) (amended by the Criminal Justice Act 1967 s 92(1), Sch 3 Pt I and by virtue of the Criminal Justice Act 1982 ss 35, 46). As to the standard scale see PARA 738 note 1.

5 Actual pursuit need not be proved; it is sufficient for the dog to run among the livestock so as to alarm them: *Stephen v Milne* 1960 SLT 276.

6 As to injury see PARA 921 note 2.

7 Dogs (Protection of Livestock) Act 1953 s 1(2) (amended by the Wildlife and Countryside Act 1981 s 12, Sch 7 para 3(1)). Head (3) in the text does not apply to a dog owned by, or in the charge of, the occupier of the field or enclosure or the owner of the sheep or a person authorised by either of those persons; or a police dog, a guide dog, a trained sheep dog, a working gun dog or a pack of hounds: Dogs (Protection of Livestock) Act 1953 s 1(2A) (added by the Wildlife and Countryside Act 1981 Sch 7 para 3(2)). As to hunting with hounds see further PARA 1032 et seq.

8 The onus being on the defendant, he discharges it upon a balance of probabilities: *R v Carr-Briant* [1943] KB 607, [1943] 2 All ER 156, CCA; *R v Dunbar* [1958] 1 QB 1, [1957] 2 All ER 737, CCA.

9 Dogs (Protection of Livestock) Act 1953 s 1(4).

10 It is sufficient to constitute a trespass if part of the body of an animal intrudes on the land: cf *Ellis v Loftus Iron Co* (1874) LR 10 CP 10. See also *Wormald v Cole* [1954] 1 QB 614, [1954] 1 All ER 683, CA; and *Singleton v Williamson* (1861) 7 H & N 410.

11 Possibly a person may 'cause' a dog to attack although he acts at the instigation of another: cf *R v Wilson* (1856) Dears & B 127, CCR. But a person who stands back and lets another act cannot, in general, be said to 'cause': cf *Kelly's Directories Ltd v Gavin and Lloyds* [1902] 1 Ch 631, CA; see also *Swallow v LCC* [1916] 1 KB 224; aliter, perhaps, where he has a legal duty to prevent the other from acting: cf *Baker v Ellison* [1914] 2 KB 762, DC, although this is doubtful in light of the typical statutory formulation 'cause or permit'.

12 Dogs (Protection of Livestock) Act 1953 s 1(3).

13 Dogs (Protection of Livestock) Act 1953 s 2(1). As to the procedure where proceedings are also brought under the Dogs Act 1871 s 2 see PARA 911 text and notes 17-18. As to police areas generally see **POLICE** vol 36(1) (2007 Reissue) PARAS 136-138.

14 It seems that the officer must not only have reasonable cause to believe but must also actually believe: see *R v Banks* [1916] 2 KB 621, CCA; *R v Harrison* [1938] 3 All ER 134, CCA; and *Nakkuda Ali v M F de S Jayaratne* [1951] AC 66, PC. Whether or not he had reasonable cause to believe is for the court to decide: see *McArdle v Egan* (1933) 150 LT 412, CA; *Nakkuda Ali v M F de S Jayaratne* [1951] AC 66, PC; *Liversidge v Anderson* [1942] AC 206, [1941] 2 All ER 338, HL.

15 Dogs (Protection of Livestock) Act 1953 s 2(2). The dog is then treated as though seized as a stray under the Dogs Act 1906 s 3(4)-(10) (see PARA 925): Dogs (Protection of Livestock) Act 1953 s 2(3).

16 Dogs (Protection of Livestock) Act 1953 s 2A (added by the Police and Criminal Evidence Act 1984 s 119(1), Sch 6 Pt I para 7).

17 See PARA 905.

UPDATE

923-924 Unburied carcasses of cattle, Worrying livestock on agricultural land

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

924-925 Worrying livestock on agricultural land, Control of dogs on roads

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(6) STRAY DOGS/925. Control of dogs on roads.

(6) STRAY DOGS

925. Control of dogs on roads.

Local authorities have power to designate roads upon which dogs must be held on a lead¹.

¹ See the Road Traffic Act 1988 s 27; and **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 1005. As to the necessity for a collar see PARA 909. As to the seizure of stray dogs by local authorities see PARA 926.

UPDATE

924-925 Worrying livestock on agricultural land, Control of dogs on roads

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(6) STRAY DOGS/926. Seizure and detention of stray dogs by local authorities.

926. Seizure and detention of stray dogs by local authorities.

An officer¹ of a local authority must, if practicable, seize and detain any dog found in a public place² or on any other land or premises³ which he has reason to believe⁴ is a stray dog⁵. If the dog wears a collar⁶ with an address on or attached to it, or the owner of the dog is known, the officer must serve on the person whose address is given, or on the owner, written notice stating that the dog has been seized and where it is being kept, and that it is liable to be disposed of if not claimed within seven clear days after the service, and if the costs of its detention⁷ are not paid⁸.

Where a dog has been detained for seven clear days after being seized or, if such notice has been served, after service, and the owner has not claimed the dog and paid all expenses, the officer may dispose of the dog by selling or giving it to a person who will, in his opinion, care properly for the dog, or to an establishment for the reception of stray dogs, or by destroying it in a manner to cause as little pain as possible, but no dog so seized may be given or sold for the purposes of vivisection⁹.

The officer or other person having charge of any dog detained must cause it to be properly fed and maintained¹⁰.

Notwithstanding any of the above, the officer may cause a dog detained under these provisions to be destroyed before the expiration of the period mentioned above where he is of the opinion that this should be done to avoid suffering¹¹.

The officer must keep a register containing prescribed particulars of or relating to dogs seized under these provisions, and the register must be available, at all reasonable times, for inspection by the public free of charge¹².

1 Every local authority must appoint an officer (under whatever title the authority may determine) for the purpose of discharging its functions under the Environmental Protection Act 1990 s 149 for dealing with stray dogs found in its area: s 149(1). 'Local authority', in relation to England, means a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly, and in relation to Wales, means a county council or a county borough council: s 149(11) (definition amended by the Local Government (Wales) Act 1994 ss 22(3), 66(8), Sch 9 para 17(13), Sch 18).

2 'Public place' means any highway and any other place to which the public are entitled or permitted to have access: Environmental Protection Act 1990 s 149(11).

3 In relation to land or premises which do not constitute a public place, the consent of the owner or occupier is required: Environmental Protection Act 1990 s 149(3).

4 As to 'reason to believe' see PARA 924 note 14.

5 Environmental Protection Act 1990 s 149(3).

6 As to the necessity for a collar see PARA 909.

7 A person claiming to be the owner of a dog seized under these provisions is not entitled to have the dog returned to him unless he pays all the expenses incurred by reason of its detention and such further amount as is for the time being prescribed: Environmental Protection Act 1990 s 149(5). The amount so prescribed is £25: Environmental Protection (Stray Dogs) Regulations 1992, SI 1992/288, reg 2.

8 Environmental Protection Act 1990 s 149(4).

9 Environmental Protection Act 1990 s 149(6). Where a dog is sold or given away as described to a person acting in good faith, the ownership of the dog is vested in the recipient: s 149(7).

10 Environmental Protection Act 1990 s 149(9).

11 Environmental Protection Act 1990 s 149(10).

12 Environmental Protection Act 1990 s 149(8). For the prescribed particulars see the Environmental Protection (Stray Dogs) Regulations 1992, SI 1992/288, reg 3.

UPDATE

926-927 Seizure and detention of stray dogs by local authorities, Duty of finder of stray dog

Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(6) STRAY DOGS/927. Duty of finder of stray dog.

927. Duty of finder of stray dog.

Any person (the 'finder'¹) who takes possession of a stray dog must forthwith either return it to its owner or take the dog to the officer of the local authority² for the area in which the dog was found, and must inform the local authority officer where the dog was found³.

Where a dog has been taken to the officer of a local authority, then if the finder desires to keep it, he must inform the officer of this fact and furnish his name and address and the officer must, having complied with the prescribed procedure⁴, allow the finder to remove the dog⁵. The finder must keep the dog for one month⁶. If the finder does not desire to keep the dog, the officer must, unless he has reason to believe⁷ it is not a stray, treat it as if it had been seized by him⁸.

1 Environmental Protection Act 1990 s 150(1) (amended by the Clean Neighbourhoods and Environment Act 2005 s 68(3), Sch 5 Pt 6).

2 As to this officer, and as to the meaning of 'local authority', see PARA 926 note 1.

3 Environmental Protection Act 1990 s 150(1) (as amended: see note 1). Failure to comply with s 150(1) is an offence punishable on summary conviction with a fine not exceeding level 2 on the standard scale: s 150(5). As to the standard scale see PARA 738 note 1.

4 The Secretary of State may by regulations prescribe this procedure: Environmental Protection Act 1990 s 150(6). See the Environmental Protection (Stray Dogs) Regulations 1992, SI 1992/288, reg 4. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

5 Environmental Protection Act 1990 s 150(2)(a).

6 Environmental Protection Act 1990 s 150(3). Failure to comply with s 150(1) is an offence punishable on summary conviction with a fine not exceeding level 2 on the standard scale: s 150(5).

7 As to 'reason to believe' see PARA 924 note 14.

8 Environmental Protection Act 1990 s 150(2)(b). As to seizure of strays by officers of local authorities see PARA 926.

UPDATE

926-927 Seizure and detention of stray dogs by local authorities, Duty of finder of stray dog

Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

927 Duty of finder of stray dog

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(7) KILLING OR INJURING DOGS/928. Killing or injuring another's dog.

(7) KILLING OR INJURING DOGS

928. Killing or injuring another's dog.

To kill, shoot or injure another man's dog without legal justification is a wrong giving rise to a claim at common law¹. Such legal justification arises from the statutory provisions relating to the protection of livestock² from dogs.

In any civil proceedings for the killing or injuring of a dog it is a defence to prove³ that the defendant acted for the protection of any livestock and was a person entitled so to act⁴, and that within 48 hours of the killing or injury the defendant gave notice of it to the officer in charge of a police station⁵. A person is entitled to act for the protection of any livestock if, and only if, (1) the livestock or the land on which it is belongs to him⁶ or to any person under whose express or implied authority he is acting⁷; and (2) the livestock was not killed or injured on land on to which it had strayed and either the dog belonged to the occupier or its presence there was authorised by him⁸.

A person so acting is deemed to be acting for the protection of any livestock if, and only if, either (a) the dog is worrying⁹ or is about to worry the livestock and there are no other reasonable means of ending or preventing the worrying¹⁰; or (b) the dog has been worrying livestock, has not left the vicinity, is not under the control of any person, and there are no practicable means of ascertaining to whom it belongs¹¹. A belief on reasonable grounds by the defendant that either of these conditions was satisfied is sufficient¹².

A dog attacking a human being may be shot in self-defence¹³, but the shooting even of a ferocious dog has been held not to be justified after the animal has ceased its attacks¹⁴, in marked contrast to the right to kill after an attack upon livestock in the circumstances set out above.

1 See *Vere v Earl Cawdor* (1809) 11 East 568; *Moore v Clarke* (1898) 62 JP 522; *Barnard v Evans* [1925] 2 KB 794, DC. A notice that trespassing dogs will be shot is no defence: *Corner v Champneys* (1814) cited in 2 Marsh at 584. As to liability for shooting animals see also PARA 782.

2 As to the meaning of 'livestock' in this context see PARA 921 note 3.

3 The onus is on the defendant, discharged on a balance of probabilities; see PARA 924 note 8.

4 Animals Act 1971 s 9(1)(a).

5 Animals Act 1971 s 9(1)(b).

6 For this purpose an animal belongs to any person who owns it or has it in his possession, and land belongs to any person who is the occupier of it: Animals Act 1971 s 9(5).

7 Animals Act 1971 s 9(2)(a).

8 Animals Act 1971 ss 5(4), 9(2)(b).

9 There is no definition of 'worrying' in the Animals Act 1971; for the definition in the Dogs (Protection of Livestock) Act 1953 s 1(2) see PARA 924.

10 Animals Act 1971 s 9(3)(a).

11 Animals Act 1971 s 9(3)(b).

12 Animals Act 1971 s 9(4).

13 *Morris v Nugent* (1836) 7 C & P 572 per Lord Denman CJ. In *Clark v Webster* (1823) 1 C & P 104 an allegation that a dog was accustomed to attack and bite humans was treated as material. Killing otherwise than by shooting must clearly also be justified.

14 *Morris v Nugent* (1836) 7 C & P 572, where the dog was shot while running away after the attack. This case must, however, be looked at with care in the light of the principles established in *Cresswell v Sirl* [1948] 1 KB 241, [1947] 2 All ER 730, CA, which principles formed the basis of the statutory provisions of the Animals Act 1971 s 9, set out in the text.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(7) KILLING OR INJURING DOGS/929. Protection of property other than livestock.

929. Protection of property other than livestock.

A person who kills or injures another's dog which is attacking property of any kind other than livestock¹, whether his own or another person's, commits no offence if he acts to protect that property or a right or interest, provided that (1) he honestly believes at the time that the property is in immediate need of protection; and (2) the means used are reasonable having regard to all the circumstances². The principles of civil liability for his action are, however, different.

Thus to kill or injure a dog in protection of game and other wild animals not reclaimed is still probably a wrong for which a claim lies³. No doubt the same would apply when property other than animals is attacked. Where animals other than livestock are attacked by a dog, liability for the killing or injuring by shooting of the dog will depend upon whether the defendant can prove (a) that at the material time the dog was either actually attacking the animals or, if left at large, would renew the attack so that the animals would be left in real and imminent danger unless renewal was prevented; and (b) that either there was in fact no practicable means other than shooting of stopping the present attack or such renewals, or that, having regard to all the circumstances in which he found himself, he acted reasonably in regarding the shooting as necessary⁴.

1 As to the meaning of 'livestock' for the purposes of the Animals Act 1971 s 9 see s 11; and PARA 921 note 3.

2 See the Criminal Damage Act 1971 s 5(2)(b); and PARA 742.

3 *Vere v Earl Cawdor* (1809) 11 East 568, followed in two county court decisions, one reported at (1881) 45 JP Jo 83, and *Brown v Belfast Water Comrs* (1912) 47 ILT 153. There is, however, an obiter dictum of Blackburn J to the contrary effect in *Taylor v Newman* (1863) 4 B & S 89 at 91, commenting on *Vere v Earl Cawdor* (1809) 11 East 568. If to shoot a dog in pursuit of game was actionable the position was unaffected by *Cresswell v Sirl* [1948] 1 KB 241, [1947] 2 All ER 730, CA, or the Animals Act 1971.

4 *Cresswell v Sirl* [1948] 1 KB 241 at 249, [1947] 2 All ER 730 at 733, CA. No doubt, in killing or injuring by means other than shooting, the same would apply.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/(7) KILLING OR INJURING DOGS/930. Baiting or trapping dogs.

930. Baiting or trapping dogs.

Although in certain circumstances a man may justifiably act to protect his property from attack by dogs, even by shooting if necessary¹, he must not so use his land as to tempt other people's dogs to destruction; thus if he sets traps baited with strong-smelling meat so near his neighbour's yard, or so near a highway where dogs may lawfully pass, that dogs are irresistibly drawn to the traps, he is liable in damages².

¹ See PARAS 928-929.

² *Townsend v Wathen* (1808) 9 East 277. He would possibly also be liable to prosecution under the Criminal Damage Act 1971 s 3, for possessing articles with intent to damage or destroy (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 338); or the Animal Welfare Act 2006 (see PARA 821 et seq).

UPDATE

930-935 Baiting or Trapping Dogs ... Boarding dogs

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/ (8) BREEDING AND BOARDING OF DOGS/(i) Breeding/931. Meaning of 'breeding establishment for dogs'.

(8) BREEDING AND BOARDING OF DOGS

(i) Breeding

931. Meaning of 'breeding establishment for dogs'.

A person keeps a breeding establishment for dogs at any premises¹ if he carries on at those premises a business of breeding dogs for sale, whether by him or any other person².

Where (1) a person keeps a bitch at any premises at any time during any period of 12 months; and (2) the bitch gives birth to a litter of puppies at any time during that period, the person is generally³ to be treated as carrying on a business of breeding dogs for sale at the premises throughout the period if a total of four or more other litters is born during the period to that or other specified bitches⁴.

1 For these purposes, 'premises' includes a private dwelling: Breeding of Dogs Act 1973 s 4A(7) (s 4A added by the Breeding and Sale of Dogs (Welfare) Act 1999 s 7).

2 Breeding of Dogs Act 1973 s 4A(1), (2) (as added: see note 1).

3 This does not apply if the person shows that none of the puppies born to bitches falling within head (1), (2) or (4) in note 4 was in fact sold during the period (whether by him or any other person): Breeding of Dogs Act 1973 s 4A(5) (as added: see note 1).

4 Breeding of Dogs Act 1973 s 4A(3) (as added: see note 1). The specified bitches referred to in the text are (1) the bitch mentioned in heads (1) and (2) in the text and any other bitches kept by the person at the premises at any time during the period; (2) any bitches kept by any relative of his at the premises at any such time; (3) any bitches kept by him elsewhere at any such time; and (4) any bitches kept (anywhere) by any person at any such time under a breeding arrangement made with him: s 4A(4) (as so added).

'Breeding arrangement' means a contract or other arrangement under which the person agrees that another person may keep a bitch of his on terms that, should the bitch give birth, the other person is to provide him with either one or more of the puppies; or the whole or part of the proceeds of selling any of them; 'relative' means the person's parent or grandparent, child or grandchild, sibling, aunt or uncle or niece or nephew or someone with whom he lives as a couple: s 4A(6) (as so added).

UPDATE

930-935 Baiting or Trapping Dogs ... Boarding dogs

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/ (8) BREEDING AND BOARDING OF DOGS/(i) Breeding/932. Licensing of breeding establishments for dogs.

932. Licensing of breeding establishments for dogs.

No one may keep a breeding establishment for dogs¹ without a licence granted by the appropriate local authority². Persons who are disqualified from keeping such an establishment, or a pet shop³, or from having the custody of animals⁴, or from the boarding of animals⁵, cannot be granted a licence⁶. On receipt of an application by a person to a local authority for the grant of a licence in respect of any premises, (1) if a licence has not previously been granted to the person in respect of the premises, the authority must arrange for the inspection of the premises by a veterinary surgeon or veterinary practitioner⁷ and by an officer of the authority⁸; (2) in any other case, the authority must arrange for the inspection of the premises by a veterinary surgeon or veterinary practitioner or by an officer of the authority (or by both)⁹. Following such an inspection, the authority must arrange for the making of a report about the premises, the applicant and any other relevant matter; and must consider the report before determining whether to grant a licence¹⁰.

In determining whether to grant a licence the local authority, without prejudice to its discretion to withhold a licence on other grounds, must have regard in particular to the need to secure:

- 112 (a) that the dogs will at all times be kept in accommodation suitable as respects construction, size of quarters, number of occupants, exercising facilities, temperature, lighting, ventilation and cleanliness¹¹;
- 113 (b) that the dogs will be adequately supplied with suitable food, drink and bedding material, adequately exercised, and visited at suitable intervals¹²;
- 114 (c) that all reasonable precautions will be taken to prevent and control the spread among dogs of infectious or contagious diseases¹³;
- 115 (d) that appropriate steps will be taken for the protection of the dogs in case of fire or other emergency¹⁴;
- 116 (e) that all appropriate steps will be taken to secure that the dogs will be provided with suitable food, drink and bedding material and adequately exercised when being transported to or from the breeding establishment¹⁵;
- 117 (f) that bitches are not mated if they are less than one year old¹⁶;
- 118 (g) that bitches do not give birth to more than six litters of puppies each¹⁷;
- 119 (h) that bitches do not give birth to puppies before the end of the period of 12 months beginning with the day on which they last gave birth to puppies¹⁸; and
- 120 (i) that accurate records in a form prescribed by regulations are kept at the premises and made available for inspection there by any officer of the local authority, or any veterinary surgeon or veterinary practitioner, authorised by the local authority to inspect the premises¹⁹.

Any licence granted must contain such conditions as will ensure the attainment of these objectives²⁰.

An appeal lies to a magistrates' court by any person aggrieved²¹ against the refusal of a licence or against any condition imposed, and the court may give such directions as to the issue of a licence, or as regards the conditions to be imposed, as it thinks proper²².

A local authority may authorise in writing any of its officers or any veterinary surgeon or veterinary practitioner to inspect premises so licensed, and any such person has power to enter and inspect at reasonable times²³. Wilful obstruction of or delay to any such person is an

offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale²⁴.

1 As to when a person keeps a breeding establishment for dogs see PARA 931. Nothing in the Breeding of Dogs Act 1973 affects the keeping of a dog at premises in pursuance of a requirement under the Animal Health Act 1981: Breeding of Dogs Act 1973 s 5(1) (amended by the Breeding and Sale of Dogs (Welfare) Act 1999 s 10, Schedule); Interpretation Act 1978 s 17(2)(b).

2 Breeding of Dogs Act 1973 s 1(1). 'Local authority' means, in England, a London borough council or district council or the Common Council of the City of London, and in Wales, a county council or county borough council: s 5(2) (amended by the Local Government Act 1974 ss 42(1), 43(2), Sch 7 para 15(2); and the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 42, Sch 18).

3 le under the Pet Animals Act 1951 s 5(3): see PARA 937.

4 le under the Protection of Animals (Amendment) Act 1954 s 1: see PARA 862.

5 le under the Animal Boarding Establishments Act 1963 s 3(3): see PARA 938.

6 Breeding of Dogs Act 1973 s 1(2) (amended by the Protection of Animals (Amendment) Act 1988 s 3(2), (3), Schedule; and the Breeding and Sale of Dogs (Welfare) Act 1999 Schedule).

7 le one registered under the Veterinary Surgeons Act 1966 s 2 or s 8 respectively: see the Breeding of Dogs Act 1973 s 5(2). See also PARAS 1133-1134.

8 Breeding of Dogs Act 1973 s 1(2A)(a) (s 1(2A), (2B) added by the Breeding and Sale of Dogs (Welfare) Act 1999 s 1). The authority may set and charge a fee for an inspection under this provision: see the Breeding of Dogs Act 1973 s 3A(2), (3) (s 3A added by the Breeding and Sale of Dogs (Welfare) Act 1999 s 6). The costs of other inspections under the Breeding of Dogs Act 1973 and the Breeding of Dogs Act 1991 must be met by the authority: Breeding of Dogs Act 1973 s 3A(1) (as so added).

9 Breeding of Dogs Act 1973 s 1(2A)(b) (as added: see note 8). As to fees see note 8.

10 Breeding of Dogs Act 1973 s 1(2B) (as added: see note 8).

11 Breeding of Dogs Act 1973 s 1(4)(a).

12 Breeding of Dogs Act 1973 s 1(4)(b) (amended by the Breeding and Sale of Dogs (Welfare) Act 1999 s 2, Schedule).

13 Breeding of Dogs Act 1973 s 1(4)(c).

14 Breeding of Dogs Act 1973 s 1(4)(d).

15 Breeding of Dogs Act 1973 s 1(4)(e).

16 Breeding of Dogs Act 1973 s 1(4)(f) (s 1(4)(f)-(i), (4A) added by the Breeding and Sale of Dogs (Welfare) Act 1999 s 2).

17 Breeding of Dogs Act 1973 s 1(4)(g) (as added: see note 16).

18 Breeding of Dogs Act 1973 s 1(4)(h) (as added: see note 16).

19 Breeding of Dogs Act 1973 s 1(4)(i), (4A) (as added: see note 16). See the Breeding of Dogs (Licensing Records) Regulations 1999, SI 1999/3192.

20 Breeding of Dogs Act 1973 s 1(4) (amended by the Breeding and Sale of Dogs (Welfare) Act 1999 s 2). The authority may set and charge a fee payable on application for a licence: see the Breeding of Dogs Act 1973 s 3A(2), (3) (as added: see note 8).

A local authority must determine whether to grant such a licence before the end of the period of three months beginning with the day on which the application for the licence is received: s 1(5A) (added by the Breeding and Sale of Dogs (Welfare) Act 1999 s 3). A licence comes into force on either the day stated in the application as that on which the applicant wishes the licence to come into force, or the day on which the licence is granted, whichever is the later, and remains in force for a period of one year: Breeding of Dogs Act 1973 s 1(6), (7) (amended by the Breeding and Sale of Dogs (Welfare) Act 1999 s 3). On the death of the licensee, the licence passes to the personal representatives for up to three months: Breeding of Dogs 1973 s 1(8).

- 21 As to the meaning of 'person aggrieved' see **JUDICIAL REVIEW**.
- 22 Breeding of Dogs Act 1973 s 1(5).
- 23 Breeding of Dogs Act 1973 s 2(1).
- 24 Breeding of Dogs Act 1973 ss 2(2), 3(2) (s 3(2) amendeded by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 738 note 1.

UPDATE

930-935 Baiting or Trapping Dogs ... Boarding dogs

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/ (8) BREEDING AND BOARDING OF DOGS/(i) Breeding/933. Breeding of dogs without or contrary to licence.

933. Breeding of dogs without or contrary to licence.

Keeping a breeding establishment for dogs¹ without a licence² or failing to comply with any condition of a licence³ is an offence punishable on summary conviction with imprisonment for a term not exceeding three months, or a fine not exceeding level 4 on the standard scale, or both⁴. On convicting a person of any offence under the Breeding of Dogs Act 1973, the court may by order cancel the offender's licence to keep a breeding establishment, disqualify him from keeping such an establishment for such period as it thinks fit, and disqualify him from having custody of any dog of a description specified in the order⁵.

The provisions of the Breeding of Dogs Act 1973 do not apply to the breeding of dogs for use in regulated procedures⁶, if they are bred at a designated⁷ breeding establishment⁸.

Where there are reasonable grounds for suspecting that an unlicensed breeding establishment for dogs is being or has been kept on any premises in the area of a local authority⁹, a warrant¹⁰ may be issued empowering an officer of the local authority, a veterinary surgeon or veterinary practitioner¹¹, authorised in writing by the local authority for the purpose, to enter¹² and inspect the premises and any animal or thing found therein¹³. Precautions may be specified to prevent the spread of infectious or contagious diseases, and must be complied with if so specified¹⁴. The obstruction or delaying of any person in the exercise of such powers of entry and inspection is an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale¹⁵. A person convicted of such offence may be disqualified from keeping a licensed establishment for such period as the court thinks fit, or be disqualified from having custody of any dog of a description specified by the court for such period as the court thinks fit, or both¹⁶.

1 As to when a person keeps a breeding establishment for dogs see PARA 931. See also PARA 932 note 1.

2 As to licences see PARA 932.

3 As to conditions attached to licences see PARA 932 text and note 20.

4 Breeding of Dogs Act 1973 ss 1(9), 3(1) (s 3(1) amended by the Breeding and Sale of Dogs (Welfare) Act 1999 s 4; and by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 738 note 1.

5 Breeding of Dogs Act 1973 s 3(3) (amended by the Breeding and Sale of Dogs (Welfare) Act 1999 s 5). The court may, if it thinks fit, suspend the operation of the order pending an appeal: Breeding of Dogs Act 1973 s 3(4).

Where a court makes an order disqualifying a person from having custody of a dog in relation to a description of dogs it may also make such order as it thinks fit in respect of any dog of that description which was in the offender's custody at the time when the offence was committed, or has been in his custody at any time since that time: s 3(5) (s 3(5)-(11) added by the Breeding and Sale of Dogs (Welfare) Act 1999). Such an order may in particular require any person who has custody of the dog to deliver it up to a specified person, and, if it does, also require the offender to pay specified amounts to specified persons for the care of the dog from the time when it is delivered up in pursuance of the order until permanent arrangements are made for its care or disposal: Breeding of Dogs Act 1973 s 3(6) (as so added). Where a court proposes to make such an order in respect of a dog owned by a person other than the offender, the court must notify the owner who may make representations to the court; and if an order is made the owner may, within the period of seven days beginning with the date of the order, appeal to the Crown Court against the order: s 3(8) (as so added).

A person who is subject to an order disqualifying him from having custody of a dog may, at any time after the end of the period of one year beginning with the date of the order, apply to the court which made the order (or any magistrates' court acting in the same local justice area) for a direction terminating the disqualification from such date as the court considers appropriate: s 3(9) (as so added; amended by the Courts Act 2003 s 109(1), Sch 8 para 171). On such an application the court (1) must notify the relevant local authority which may make representations to the court; (2) must, having regard to the applicant's character and his conduct since the

disqualification was imposed, any representations made by the relevant local authority and any other circumstances of the case, grant or refuse the application; and (3) may order the applicant to pay all or any part of the costs of the application (including any costs of the relevant local authority in making representations): see s 3(10) (as so added). Where such an application is refused, no further application in respect of that disqualification may be entertained if made within one year beginning with the date of the refusal: s 3(11) (as so added).

A person who has custody of a dog in contravention of an order disqualifying him from having such custody, or who fails to comply with a requirement imposed on him under s 3(6), is guilty of an offence punishable on summary conviction with imprisonment for a term not exceeding three months, or a fine not exceeding level 4 on the standard scale, or both: s 3(1), (7) (as amended and added respectively).

6 As to the meaning of 'regulated procedures' see the Animals (Scientific Procedures) Act 1986 s 2; and PARA 876.

7 le designated by a certificate issued under the Animals (Scientific Procedures) Act 1986 s 7; see PARA 881.

8 Animals (Scientific Procedures) Act 1986 s 27(3).

9 le that an offence has been or is being committed against the Breeding of Dogs Act 1973 s 1(1); see PARA 932, and text and notes 1-3.

10 The warrant continues in force for one month: Breeding of Dogs Act 1991 s 1(4)(b). It must be produced if required: s 1(5)(a).

11 Persons may be authorised to accompany the person executing the warrant: Breeding of Dogs Act 1991 s 1(4)(a). 'Local authority', 'veterinary surgeon' and 'veterinary practitioner' have the same meanings as in the Breeding of Dogs Act 1973 (see PARA 932 notes 2, 7): Breeding of Dogs Act 1991 s 1(7).

12 The power of entry may be exercised at all reasonable times: Breeding of Dogs Act 1991 s 1(5). Such entry may, if necessary, be effected by reasonable force: s 1(1).

13 Breeding of Dogs Act 1991 s 1(1). No warrant, however, may be issued authorising entry to premises used for the time being as a private dwelling: s 1(2). 'Private dwelling' does not include any garage, outhouse or other structure, whether or not part of the same building, belonging to or usually enjoyed with the premises: s 1(3).

14 Breeding of Dogs Act 1991 s 1(5)(b). As to animal health generally see PARAS 1040-1125.

15 Breeding of Dogs Act 1991 s 2(1).

16 Breeding of Dogs Act 1991 s 2(2) (amended by the Breeding and Sale of Dogs (Welfare) Act 1999 s 5(4)). Such an order may be suspended by the court pending an appeal: Breeding of Dogs Act 1991 s 2(2A) (s 2(2A), (2B) added by the Breeding and Sale of Dogs (Welfare) Act 1999 s 5(5)).

An order under this provision disqualifying a person from having custody of a dog is subject to the provisions of the Breeding of Dogs Act 1973 s 3(5)-(11) (see note 5): Breeding of Dogs Act 1991 s 2(2B) (as so added).

UPDATE

930-935 Baiting or Trapping Dogs ... Boarding dogs

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/6. DOGS/ (8) BREEDING AND BOARDING OF DOGS/ (ii) Dogs in Boarding Establishments/935. Boarding dogs.

(ii) Dogs in Boarding Establishments

935. Boarding dogs.

The keeping of dogs in boarding establishments is governed by the provisions of the Animal Boarding Establishments Act 1963, which relates to both dogs and cats¹.

UPDATE

UPDATE

930-935 Baiting or Trapping Dogs ... Boarding dogs

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/7. ANIMAL ESTABLISHMENTS/ (1) PET SHOPS/936. Licensing and sale.

7. ANIMAL ESTABLISHMENTS

(1) PET SHOPS

936. Licensing and sale.

No person may keep a pet shop¹ unless he is licensed so to do by the local authority². In deciding whether to grant a licence the authority must have regard in particular to the need for securing that animals will be kept in suitable accommodation; that they will be adequately supplied with food and drink and, so far as necessary, visited; that, if mammals, they will not be sold at too early an age; and that reasonable precautions will be taken to prevent the spread of infectious diseases and to guard against fire or other emergency; and the authority must specify in any licences granted such conditions as appear to it necessary or expedient to secure these objects³. An appeal lies to a magistrates' court against the refusal of a licence, or against any condition subject to which it is proposed to be granted⁴.

Carrying on a business of selling animals as pets⁵ in any part of a street or public place, or at a stall or barrow in a market, is an offence⁶. Selling an animal to a person whom the seller has reasonable cause to believe to be under the age of 16 years is an offence under the Animal Welfare Act 2006⁷.

1 The keeping of a pet shop means the carrying on at premises of any nature, including a private dwelling, of a business of selling animals as pets, and the keeping of animals in any such premises with a view to their being sold in the course of such a business, whether by the keeper or any other person: Pet Animals Act 1951 s 7(1). A person is not, however, deemed to keep a pet shop by reason only of his keeping or selling pedigree animals bred by him or the offspring of an animal kept by him as a pet; and a local authority may direct that a particular breeder is not to be deemed to keep a pet shop merely because he sells as pets animals which he acquired for breeding or show purposes but found not to be suitable or required for such use: s 7(1) proviso. 'Animal' includes any description of vertebrate, and 'pedigree animal' means any animal which is by its breeding eligible for registration with a recognised club or society keeping a register of that description of animal: s 7(3). As to the meaning of 'vertebrate' see PARA 875 note 2. As to local authorities see note 2. Where an organiser of an event provides facilities to enable a trader to carry on the business of selling animals as pets, the mere provision of those facilities of itself does not have the consequence that the organiser is the keeper of a pet shop nor of itself does it have the consequence that the trader is not the keeper of a pet shop at the event: *R (on the application of Haynes) v Stafford Borough Council* [2006] EWHC 1366 (Admin), [2007] 1 WLR 1365.

2 Pet Animals Act 1951 s 1(1), (2). A fee is charged for a licence and the licence is granted subject to conditions specified in it: s 1(2) (amended by the Local Government Act 1974 ss 35(1), (2), 42(2), Sch 6 para 8, Sch 8). A licence may be granted either for the current year, in which case it comes into force on the day when it is granted, or for the next following year; in either case it expires at the end of the year in question: Pet Animals Act 1951 s 1(5), (6). 'Local authority' means the council of any district or London borough, or the Common Council of the City of London, and in Wales, the council of a county or county borough: s 7(3) (amended by the Local Government Act 1972 s 272(1), Sch 30); Local Government (Wales) Act 1994 s 17.

3 Pet Animals Act 1951 s 1(3). No condition, however, may be specified under s 1(3) in so far as it relates to any matter in relation to which requirements or prohibitions are or could be imposed by or under the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541 (see **FIRE SERVICES**): Pet Animals Act 1951 s 1(3A) (added by SI 2005/1541).

4 Pet Animals Act 1951 s 1(4).

5 Selling an animal as a pet includes, as respects a dog or cat, selling it wholly or mainly for domestic purposes, and as respects any animal, selling it for ornamental purposes: Pet Animals Act 1951 s 7(2).

6 Pet Animals Act 1951 s 2 (amended by the Pet Animals Act 1951 (Amendment) Act 1983 s 1). As to the offences see PARA 937. As a matter of pure law, on its true construction, the word 'market' in the Pet Animals Act 1951 s 2 is not confined to franchise markets, street markets, open markets, or public markets: see *R (on the application of Haynes) v Stafford Borough Council* [2006] EWHC 1366 (Admin), [2007] 1 WLR 1365. As from a day to be appointed, the Pet Animals Act 1951 s 2 is repealed by the Animal Welfare Act 2006 ss 64, 65, Sch 3 para 3(1), Sch 4. At the date at which this volume states the law, no such day had been appointed.

7 See the Animal Welfare Act 2006 s 11(1); and PARA 832. Having 'reasonable cause to believe' means having such cause and in fact so believing: *R v Banks* [1916] 2 KB 621, CCA; *R v Harrison* [1938] 3 All ER 134, CCA.

UPDATE

936-959 Animal Establishments

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/7. ANIMAL ESTABLISHMENTS/ (1) PET SHOPS/937. Offences.

937. Offences.

Contravention of any provisions relating to pet animals or of a condition of a licence¹ is punishable on summary conviction with a fine not exceeding level 2 on the standard scale or imprisonment for a term not exceeding three months, or both².

A local authority³ may authorise any of its officers or a veterinary surgeon or veterinary practitioner⁴ to inspect a pet shop, and the wilful obstruction of such an inspector is punishable with a fine not exceeding level 2 on the standard scale⁵.

On conviction for any of these offences or of a specified offence under the Animal Welfare Act 2006⁶ a licence may be cancelled, and the holder, whether or not he holds a licence, may be disqualified from keeping a pet shop for such period as the court thinks fit⁷.

A local authority in England or Wales may prosecute proceedings for any such offence committed in the authority's area⁸.

1 See PARA 936.

2 Pet Animals Act 1951 ss 1(7), 5(1) (s 5(1), (2) amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 738 note 1.

3 As to the meaning of 'local authority' see PARA 936 note 2.

4 As to veterinary surgeons and veterinary practitioners see PARAS 1133, 1134.

5 Pet Animals Act 1951 ss 4, 5(2) (as amended: see note 2). As to the meaning of 'wilful obstruction' see PARA 938 note 18.

6 Ie under the Animal Welfare Act 2006 s 4, 5, 6(1), (2), 7-9 or 11. See PARAS 826-832.

7 Pet Animals Act 1951 s 5(3) (amended by the Animal Welfare Act 2006 s 64, Sch 3 para 3(2)). The cancellation or disqualification may be suspended pending an appeal: Pet Animals Act 1951 s 5(4).

8 Pet Animals Act 1951 s 6.

UPDATE

936-959 Animal Establishments

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/7. ANIMAL ESTABLISHMENTS/ (2) ANIMAL BOARDING ESTABLISHMENTS/938. Boarding dogs and cats.

(2) ANIMAL BOARDING ESTABLISHMENTS

938. Boarding dogs and cats.

No one may keep a boarding establishment for animals¹ without a licence granted by the appropriate local authority². Persons who are disqualified from keeping such an establishment³, from keeping a pet shop⁴, from having the custody of animals⁵, or from owning, keeping, dealing in or transporting animals⁶ cannot be granted a licence⁷.

In determining whether to grant a licence the local authority, without prejudice to its discretion to withhold a licence on other grounds, must have regard in particular to the need to secure that the animals will be suitably accommodated, fed, exercised and protected from disease and fire and that a proper register of animals with dates of arrival and departure and owners' names and addresses is kept⁸. Any licence granted must contain such conditions as will ensure the attainment of these objectives⁹. Such fee as may be determined by the local authority may be charged for the licence¹⁰.

An appeal lies to a magistrates' court by any person aggrieved¹¹ against the refusal of a licence or against any condition imposed, and the court may give such directions as to the issue of a licence, or as regards the conditions to be imposed, as it thinks proper¹².

Keeping a boarding establishment without a licence or failing to comply with any condition of a licence is an offence punishable on summary conviction by imprisonment for up to three months or a fine not exceeding level 2 on the standard scale or both¹³. On convicting a person of any offence under the Animal Boarding Establishments Act 1963, the Protection of Animals Act 1911, the Protection of Animals (Scotland) Act 1912, the Pet Animals Act 1951 or specified provisions¹⁴ of the Animal Welfare Act 2006, the court may cancel the offender's licence to keep a boarding establishment and, whether or not he holds such a licence, may disqualify him from holding such a licence for such period as it thinks fit¹⁵.

A local authority may authorise in writing any of its officers or any veterinary surgeon or veterinary practitioner¹⁶ to inspect premises so licensed, and any such person has powers of entry and inspection at reasonable times¹⁷. Wilful obstruction¹⁸ of or delay to any such person is an offence punishable on summary conviction with a fine not exceeding level 2 on the standard scale¹⁹.

1 This is defined as carrying on at any premises (including a private dwelling) a business of providing accommodation for other people's cats and dogs: Animal Boarding Establishments Act 1963 s 5(1), (2). A person is not deemed to be carrying on such a business if he provides such accommodation in connection with a business of which the provision of such accommodation is not the main activity: s 5(1) proviso (a). This eg excludes veterinary surgeons or practitioners who may provide accommodation as a sideline to their practices. Nothing in the Act affects the keeping of an animal at premises in pursuance of a requirement under the Animal Health Act 1981: Animal Boarding Establishments Act 1963 s 5(1) proviso (b) (amended by the Animal Health Act 1981 s 96, Sch 5 para 6).

2 Animal Boarding Establishments Act 1963 s 1(1), (2). 'Local authority' means a district council, London borough council or the Common Council of the City of London, or in Wales the council of a county or county borough: s 5(2) (amended by the Local Government Act 1972 ss 179(1), (3), 272(1), Sch 30); Local Government (Wales) Act 1994 s 17.

3 See text to note 13.

4 ie under the Pet Animals Act 1951 s 5(3): see PARA 937.

- 5 le under the Protection of Animals (Amendment) Act 1954 s 1 (repealed).
- 6 le under the Animal Welfare Act 2006 s 34(2), (3) or (4): see PARA 852.
- 7 Animal Boarding Establishments Act 1963 s 1(2) (amended by the Protection of Animals (Amendment) Act 1988 s 3(2), (3), Schedule; and by the Animal Welfare Act 2006 s 64, Sch 3 para 5(1)).
- 8 Animal Boarding Establishments Act 1963 s 1(3).
- 9 Animal Boarding Establishments Act 1963 s 1(3). The licence relates to the year it was granted or the next following year, and expires at the end of that year: see s 1(5), (6). On the death of the licensee, the licence passes to the personal representatives for up to three months: see s 1(7).
- 10 Animal Boarding Establishments Act 1963 s 1(2) (amended by the Local Government Act 1974 ss 35, 42 (2), Sch 6 para 17, Sch 8).
- 11 As to the meaning of 'person aggrieved' see **JUDICIAL REVIEW**.
- 12 Animal Boarding Establishments Act 1963 s 1(4).
- 13 Animal Boarding Establishments Act 1963 ss 1(8), 3(1) (s 3(1), (2) amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 738 note 1. A local authority in England or Wales may prosecute proceedings for any offence under the Animal Boarding Establishments Act 1963 committed in the authority's area: s 4. As from a day to be appointed, s 3(1) applies also to offences under s 2 and the penalty of imprisonment is removed: s 3(1) (prospectively amended by the Criminal Justice Act 2003 s 332, Sch 37 Pt 9). At the date at which this volume states the law, no such day had been appointed.
- 14 le any of the Animal Welfare Act 2006 ss 4, 5, 6(1), (2), 7-9, 11. See PARAS 826-832.
- 15 Animal Boarding Establishments Act 1963 s 3(3) (amended by the Animal Welfare Act 2006 Sch 3 para 5(2)). A court which has ordered such cancellation or disqualification may, if it thinks fit, suspend the operation of the order pending an appeal: s 3(4).
- 16 le one registered under the Veterinary Surgeons Act 1966 s 2 or s 8 respectively: see PARAS 1133-1134.
- 17 Animal Boarding Establishments Act 1963 s 2(1).
- 18 The phrase 'wilful obstruction' is used in many statutes but has normally been judicially interpreted in the context of the Police Act 1996 s 89(2); see generally **POLICE** vol 36(1) (2007 Reissue) PARA 481. In *Lewis v Cox* [1985] QB 509, [1984] 3 All ER 672, DC, the authorities were reviewed and it was held that a person 'wilfully obstructs' a police officer in the execution of his duty if his conduct actually prevents the police from carrying out their duty or makes it more difficult for them to do so and if he intentionally does the act realising that it would have an obstructive effect, regardless of his underlying motives. It is submitted that a similar interpretation (*mutatis mutandis*) should be given to the same words in the Animal Boarding Establishments Act 1963.
- 19 Animal Boarding Establishments Act 1963 ss 2(2), 3(2) (s 3(2) as amended: see note 12). As from a day to be appointed, s 3(2) is repealed by the Criminal Justice Act 2003 Sch 37 Pt 9. See note 13. At the date at which this volume states the law, no such day had been appointed.

UPDATE

936-959 Animal Establishments

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/7. ANIMAL ESTABLISHMENTS/ (2) ANIMAL BOARDING ESTABLISHMENTS/939. Breeding of dogs.

939. Breeding of dogs.

The keeping of breeding establishments for dogs is subject to the provisions of the Breeding of Dogs Act 1973 and the Breeding and Sale of Dogs (Welfare) Act 1999, and dealt with earlier in this title¹.

¹ See PARAS 931-934.

UPDATE

936-959 Animal Establishments

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/7. ANIMAL ESTABLISHMENTS/ (3) RIDING ESTABLISHMENTS/940. Licensing of riding establishments.

(3) RIDING ESTABLISHMENTS

940. Licensing of riding establishments.

No person may keep a riding establishment, that is to say, carry on the business of keeping horses¹ either for letting out on hire for riding or for providing riding instruction in return for payment, or both², except under the authority of a licence granted by the appropriate local authority³. No one who is disqualified from keeping a riding establishment⁴, from keeping a pet shop⁵, from having the custody of animals⁶, from keeping an animal boarding establishment⁷, or from owning, keeping, dealing in or transporting animals⁸, or who is under 18, can obtain such a licence, which must specify the premises at which the business is to be carried on and may include conditions as to its operation⁹.

The local authority must not decide whether to grant a licence until it has received and considered a report by its inspecting veterinary surgeon or veterinary practitioner¹⁰ of the result of an inspection of the relevant premises¹¹ within the 12 months prior to the receipt by the authority of the application or thereafter¹², and it must have regard, in considering whether to grant a licence, to the suitability of the applicant or his manager, the suitability of the accommodation and pasturage, the adequacy of the provisions for the horses' health, welfare and exercise, the precautions against fire and disease, and the suitability of the horses for the purposes for which they are kept¹³.

An appeal lies to a magistrates' court against the refusal of a licence or against any condition included in it¹⁴, and the court may give such directions as to the issue of a licence and its conditions as it thinks proper¹⁵.

1 'Horse' means any mare, gelding, pony, foal, colt, filly or stallion, and any ass, mule or jennet: Riding Establishments Act 1964 s 6(4).

2 Riding Establishments Act 1964 s 6(1). Such a business is exempt if the premises (including land) where the horses are kept are occupied by or under the management of the Secretary of State for Defence, or if it is carried on solely for police purposes or by the Zoological Society of London (s 6(1), (4)), or if the horses are kept by a university for the instruction of students undergoing an approved course leading to a veterinary degree (s 6(2)). A person keeping a riding establishment is taken to keep it at the premises where the horses are kept: s 6(3).

3 Riding Establishments Act 1964 s 1(1), (2). 'Local authority' means, in England, the council of a district or London borough or the Common Council of the City of London, and in Wales, the council of a county or county borough: s 6(4) (amended by the Local Government Act 1972 ss 251(2), 272(1), Sch 29 Pt II para 42, Sch 30; and the Local Government (Wales) Act 1994 s 22(3), Sch 9 para 7). A provisional licence for three months may be issued where the local authority is not satisfied that a permanent licence may be granted, but a person may not keep a riding establishment under a provisional licence for more than six months in any year: Riding Establishments Act 1970 s 1(1), (2). A licence is granted on payment of such fee as may be determined by the local authority: Riding Establishments Act 1964 s 1(2) (amended by the Local Government Act 1974 s 35, Sch 6 para 18). The licence relates to the year in which it was granted or the following year, and thereafter expires: see the Riding Establishments Act 1964 s 1(6), (7). On the death of the licensee, the licence passes to the personal representatives for up to a year: see s 1(8).

4 A court convicting a person of any offence under the Protection of Animals Act 1911, the Pet Animals Act 1951, the Animal Boarding Establishments Act 1963, the Riding Establishments Act 1964 or the Animal Welfare Act 2006 s 4, 5, 6(1), (2), 7-9 or 11 may disqualify him from keeping a riding establishment for such time as it thinks fit: Riding Establishments Act 1964 s 4(3) (amended by the Animal Welfare Act 2006 s 64, Sch 3 para 6(2)).

5 Ie under the Pet Animals Act 1951 s 5(3); see PARA 937.

6 le under the Protection of Animals (Amendment) Act 1954 s 1(1) (repealed).

7 le under the Animal Boarding Establishments Act 1963 s 3(3); see PARA 938.

8 le under the Animal Welfare Act 2006 s 34(2), (3) or (4): see PARA 852.

9 Riding Establishments Act 1964 s 1(2) (amended by the Protection of Animals (Amendment) Act 1988 s 3(2), (3), Schedule; and the Animal Welfare Act 2006 Sch 3 para 6(1)). As to the conditions see the Riding Establishments Act 1964 s 1(4) (substituted by the Riding Establishments Act 1970 s 2(1)(ii)). In particular, it may be a condition that the applicant is the holder of an approved certificate: s 1(4)(a) (as so substituted). 'Approved certificate' means (1) an Assistant Instructor's Certificate, Instructor's Certificate or Fellowship issued by the British Horse Society; (2) Fellowship of the Institute of the Horse; or (3) any other certificate for the time being prescribed by order by the Secretary of State: s 6(4) (definition added by the Riding Establishments Act 1970 s 5). Such an order must be made by statutory instrument: see the Riding Establishments Act 1964 s 6A (added by the Riding Establishments Act 1970 s 6). At the date at which this volume states the law, no such order had been made.

In addition, every licence is subject to conditions, whether specified in the licence or not, as to not using horses found on inspection to need veterinary attention until certified fit, the provision of proper supervision for riders needing it, the business not being left in the charge of a person under 16, the holding of proper insurances and the keeping of a register of horses aged three years and under: Riding Establishments Act 1964 s 1(4A) (added by the Riding Establishments Act 1970 s 2(1)(ii)).

As to the Secretary of State and the transfer of functions to the National Assembly for Wales see PARAS 705-706.

10 See PARA 941.

11 'Premises' includes land: Riding Establishments Act 1964 s 6(4).

12 Riding Establishments Act 1964 s 1(3).

13 Riding Establishments Act 1964 s 1(4) (as substituted: see note 8).

14 No appeal lies against a condition set out in the Riding Establishments Act 1964 s 1(4A) (as added: see note 8).

15 See the Riding Establishments Act 1964 s 1(5) (amended by the Riding Establishments Act 1970 s 2(2)).

UPDATE

936-959 Animal Establishments

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/7. ANIMAL ESTABLISHMENTS/ (3) RIDING ESTABLISHMENTS/941. Inspection of premises.

941. Inspection of premises.

A local authority¹ may authorise a person to inspect premises² in its area where it has reason to believe a person is keeping a riding establishment or as respects which a licence is in force or has been applied for³. A person so authorised, who may be an officer of the authority, an officer of another local authority, a veterinary surgeon or a veterinary practitioner⁴, may enter the premises and inspect horses and things found there for the purpose of making a report⁵ or ascertaining whether an offence has been or is being committed against the Riding Establishments Act 1964⁶.

1 As to the meaning of 'local authority' see PARA 940 note 3.

2 As to the meaning of 'premises' see PARA 940 note 11.

3 Riding Establishments Act 1964 s 2(1).

4 Riding Establishments Act 1964 s 2(1). As to professional inspectors see s 2(3). As to veterinary surgeons and practitioners see PARAS 1133-1134.

5 See the Riding Establishments Act 1964 s 1(3); and PARA 940.

6 Riding Establishments Act 1964 s 2(2). As to obstructing or delaying an inspector see PARA 942.

UPDATE

936-959 Animal Establishments

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/7. ANIMAL ESTABLISHMENTS/ (3) RIDING ESTABLISHMENTS/942. Offences, penalties and disqualification.

942. Offences, penalties and disqualification.

It is an offence to keep a riding establishment without a licence, and the grantee of a licence is guilty of an offence if he contravenes or does not comply with any condition¹ of the licence².

A person commits an offence who:

- 121 (1) lets out a horse on hire, or uses it for providing riding instruction in return for payment or for demonstration riding, when it is in such a condition that riding it would be likely to cause it suffering³, or when it is aged three years or under, or is a mare heavy with foal or within three months after foaling⁴; or
- 122 (2) supplies, for a horse which is let out on hire by him for riding, equipment which is used in the course of the hiring and which when supplied suffers from a defect apparent on inspection and likely to cause suffering to the horse or an accident to the rider⁵; or
- 123 (3) fails to provide suitable curative care for a sick or injured horse kept by him with a view to its being let out on hire or used as mentioned in head (1) above⁶; or
- 124 (4) in keeping a riding establishment, knowingly⁷ permits any person disqualified from keeping one⁸ to have control or management⁹; or
- 125 (5) conceals or causes to be concealed any horse maintained by the riding establishment with intent to avoid inspection¹⁰; or
- 126 (6) for the purpose of obtaining a licence gives information he knows to be false in a material particular or makes a statement he knows to be so false, or recklessly gives any information which is so false or makes a statement which is so false¹¹; or
- 127 (7) wilfully obstructs¹² or delays any person in the exercise of his powers of entry or inspection¹³.

A local authority¹⁴ may prosecute for any offence committed in its area¹⁵. Only a local authority may institute proceedings for contravention of or failure to comply with conditions in a licence, and it must first consider a report by an inspecting veterinary surgeon or veterinary practitioner¹⁶.

Any of the above offences, other than that under head (7) above, is punishable on summary conviction with a fine not exceeding level 3 on the standard scale or imprisonment for a term not exceeding three months or both¹⁷. The summary penalty for an offence under head (7) is a fine not exceeding level 2 on the standard scale¹⁸. A court convicting a person of any of these offences or of an offence under certain other Acts relating to animals¹⁹ may cancel his licence to keep a riding establishment and, whether or not he is so licensed, disqualify him from keeping a riding establishment for such period as the court thinks fit²⁰.

1 This includes a condition of the kind referred to in PARA 940 note 9.

2 Riding Establishments Act 1964 s 1(9) (amended by the Riding Establishments Act 1970 s 2(2)).

3 Riding Establishments Act 1964 s 3(1)(a).

4 Riding Establishments Act 1964 s 3(1)(aa) (added by the Riding Establishments Act 1970 s 3).

5 Riding Establishments Act 1964 s 3(1)(b).

6 Riding Establishments Act 1964 s 3(1)(c).

- 7 As to the meaning of 'knowingly' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 8.
- 8 See PARA 940.
- 9 Riding Establishments Act 1964 s 3(1)(d).
- 10 Riding Establishments Act 1964 s 3(1)(e).
- 11 Riding Establishments Act 1964 s 3(2).
- 12 As to the meaning of 'wilfully obstructs' see PARA 938 note 18.
- 13 Riding Establishments Act 1964 s 2(4). As to these powers see PARA 941.
- 14 As to the meaning of 'local authority' see PARA 940 note 3.
- 15 Riding Establishments Act 1964 s 5(1).
- 16 Riding Establishments Act 1964 s 5(2). As to veterinary surgeons and veterinary practitioners see PARAS 1133-1134.
- 17 Riding Establishments Act 1964 s 4(1) (s 4(1), (2) amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 738 note 1. As from a day to be appointed, the penalty of imprisonment is removed: s 4(1) (prospectively amended by the Criminal Justice Act 2003 s 332, Sch 37 Pt 9). At the date at which this volume states the law, no such day had been appointed.
- 18 Riding Establishments Act 1964 s 4(2) (as amended: see note 17).
- 19 See PARA 940 note 4.
- 20 Riding Establishments Act 1964 s 4(3) (amended by the Animal Welfare Act 2006 Sch 3 para 6(2)). The court may suspend the operation of the order pending an appeal: Riding Establishments Act 1964 s 4(4).

UPDATE

936-959 Animal Establishments

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/8. ZOOS/(1) INTRODUCTION/943. Applicable legislation.

8. ZOOS

(1) INTRODUCTION

943. Applicable legislation.

The conduct and regulation of zoos in England and Wales is governed by the licensing system under the Zoo Licensing Act 1981, which, for the purposes of this title, extends to England and Wales¹.

¹ The Zoo Licensing Act 1981 does not extend to Northern Ireland: s 23(3).

The Act is variously amended by the Zoo Licensing Act 1981 (Amendment) (England and Wales) Regulations 2002, SI 2002/3080 (which have effect in England only), and the Zoo Licensing Act 1981 (Amendment) (Wales) Regulations 2003, SI 2003/992. In relation to zoos in Wales which have a licence in force on 22 April 2003, the appropriate local authority must before 1 October 2003 ensure that each such licence contains such conditions as the authority thinks necessary or desirable to secure that the conservation measures mentioned in the Zoo Licensing Act 1981 s 1A (see PARA 945) are implemented at the zoo: see the Zoo Licensing Act 1981 (Amendment) (Wales) Regulations 2003, SI 2003/992, reg 3(1), (2). For further transitional provisions in relation to such zoos and licences see reg 3(3)-(6). For transitional provisions in Wales in relation to zoos without licences see reg 4.

As to the extent of the duty of care imposed on the proprietors of a zoo in relation to keepers employed by them see *Canterbury City Council v Howletts & Port Lympne Estates Ltd* [1997] ICR 925, [1997] JPIL 51.

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936-959 Animal Establishments

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/8. ZOOS/ (2) LICENSING AND INSPECTION/944. Licences.

(2) LICENSING AND INSPECTION

944. Licences.

It is unlawful to operate a zoo¹ except under the authority of a licence issued by the local authority² for the area within which the whole or major part of the zoo is situated³. An application for a licence will not be considered unless written notice of it has been given at least two months beforehand, notice of the intended application has been published in one local and one national newspaper and a copy exhibited at the site⁴. Any such notice must contain certain specified information⁵.

When considering the application the local authority must take into account representations made by or on behalf of certain specified persons including the applicant⁶, must consider inspectors' reports⁷, and must consult the applicant as to conditions⁸.

The local authority must refuse a licence if it is satisfied that the zoo would injuriously affect the health or safety of persons living in the neighbourhood or seriously affect the preservation of law and order⁹, or if it is not satisfied that the applicable conservation measures will be implemented in a satisfactory manner at the zoo¹⁰. The authority may refuse a licence if (1) though satisfied as to the conservation measures, it is not satisfied as to the adequacy of the accommodation, staffing or management of the zoo¹¹; or (2) if the applicant, an officer of or a keeper¹² in the zoo has been convicted of an offence under the Zoo Licensing Act 1981 or any other specified enactment, or any other offence involving ill-treatment of animals¹³.

An original licence is for four years, and a fresh licence granted to an existing licence holder is for six years from the expiry of the existing one¹⁴. A licence must be granted subject to conditions requiring the applicable conservation measures to be implemented at the zoo¹⁵.

A licence may be made subject to certain conditions¹⁶ and may be transferred to another person or surrendered¹⁷. A copy must be displayed at every public entrance to the zoo¹⁸.

1 'Zoo' means an establishment where wild animals are kept for exhibition to the public otherwise than for purposes of a circus and otherwise than in a pet shop: Zoo Licensing Act 1981 s 1(2) (amended by SI 2002/3080 (England); and SI 2003/992 (Wales)).

The Zoo Licensing Act 1981 applies to any zoo to which members of the public have access, with or without charge for admission, on seven days or more in any period of 12 consecutive months: s 1(2A) (s 1(2A)-(2C) added by SI 2002/3080 (England); and SI 2003/992 (Wales)). It also applies in accordance with its terms to any zoo to which members of the public do not have such access if a licence is in force in respect of it or as otherwise provided (in particular, in the Zoo Licensing Act 1981 ss 13, 16C-16G (see PARAS 948, 953 et seq)): s 1(2B) (as so added).

The animals covered by the Act are of the classes *Mammalia*, *Aves*, *Reptilia*, *Amphibia*, *Pisces* and *Insecta* and any other multi-cellular organism that is not a plant or fungus, and 'wild animals' means animals not normally domesticated in Great Britain: s 21(1). As to the meaning of 'Great Britain' see PARA 830 note 21.

'Circus' means a place where animals are kept or introduced wholly or mainly for the purposes of performing tricks or manoeuvres in that place; and 'pet shop' means premises for whose keeping a pet shop licence is in force or required under the Pet Animals Act 1951: Zoo Licensing Act 1981 s 21(1).

2 Local authorities for the purpose are, in England, the district councils, the councils of London boroughs and the Common Council of the City of London, and in Wales, councils of counties and county boroughs: Zoo Licensing Act 1981 s 1(3) (amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 62(1), Sch 18).

3 Zoo Licensing Act 1981 s 1(1). As to offences see PARA 959.

4 Zoo Licensing Act 1981 s 2(1). The local authority must keep the notice available for inspection by the public until the application is disposed of: s 2(3).

5 Any notice given or published under the Zoo Licensing Act 1981 s 2(1) must identify the situation of the zoo for which the application is to be made: s 2(2). The notice to the local authority must specify (1) the kinds of animals, and approximate number of each group kept or to be kept for exhibition on the premises and the arrangements for their accommodation, maintenance and well-being; (2) the approximate numbers and categories of staff employed or to be employed in the zoo; (3) the approximate number of visitors and motor vehicles for which accommodation is or is to be provided; (4) the approximate number and position of the means of access provided or to be provided to the premises: s 2(2)(a)-(d). The notice to the authority must, further, specify how the conservation measures referred to in s 1A (see PARA 945) are being or will be implemented at the zoo: s 2(2A) (added by SI 2002/3080 (England); and SI 2003/992 (Wales)).

6 See the Zoo Licensing Act 1981 s 3 (amended by the Local Government Act 1985 s 102, Sch 17; the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 62(2); and SI 2005/1541).

7 Zoo Licensing Act 1981 s 4(1) (amended by SI 2002/3080 (England); and SI 2003/992 (Wales)). The local authority must make arrangements for an inspection to be carried out in accordance with s 9A (subject to s 9A(2)): Zoo Licensing Act 1981 s 4(1A)(b) (s 4(1A) added by SI 2002/3080 (England); and SI 2003/992 (Wales)). As to inspections see PARA 947.

8 Zoo Licensing Act 1981 s 4(1A)(a) (as added: see note 7).

9 Zoo Licensing Act 1981 s 4(2).

10 Zoo Licensing Act 1981 s 4(2A) (added by SI 2002/3080 (England); and SI 2003/992 (Wales)). As to the applicable conservation measures see PARA 945.

11 See the Zoo Licensing Act 1981 s 4(3) (amended by SI 2002/3080 (England); and SI 2003/992 (Wales)).

12 'Keeper' includes any person employed under the directions of a keeper: Zoo Licensing Act 1981 s 21(1).

13 See the Zoo Licensing Act 1981 s 4(4), (5) (s 4(5) amended by the Wildlife and Countryside Act 1981 ss 72(14), 73(1), Sch 17; and the Animal Welfare Act 2006 s 64, Sch 3 para 11). A licence may also be refused if planning permission has not been granted: Zoo Licensing Act 1981 s 4(6) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 49). The grounds of refusal must be sent by post to the applicant: Zoo Licensing Act 1981 s 4(7).

The offences referred to in the text are offences under the Protection of Animals Act 1911; the Protection of Animals (Scotland) Acts 1912 to 1964; the Performing Animals (Regulation) Act 1925; the Pet Animals Act 1951; the Animals (Cruel Poisons) Act 1962; the Animal Boarding Establishments Act 1963; the Riding Establishments Acts 1964 and 1970; the Breeding of Dogs Act 1973; the Dangerous Wild Animals Act 1976; the Endangered Species (Import and Export) Act 1976; the Wildlife and Countryside Act 1981 Pt I (ss 1-27); and the Animal Welfare Act 2006 ss 4, 5, 6(1), (2), 7-9, 11: s 4(5) (as so amended).

14 Zoo Licensing Act 1981 s 5(1), (2). There are provisions for charging fees for the grant, renewal or transfer of a licence and for applications for the same and for expenses of inspectors: see s 15 (amended by SI 2002/3080 (England); and SI 2003/992 (Wales)).

15 Zoo Licensing Act 1981 s 5(2A) (added by SI 2002/3080 (England); and SI 2003/992 (Wales)).

16 See the Zoo Licensing Act 1981 s 5(3) (s 5(3), (4) amended by SI 2002/3080 (England); and SI 2003/992 (Wales)). In considering what conditions to attach, the local authority must have regard to any standards specified by the Secretary of State or the Welsh Ministers under the Zoo Licensing Act 1981 s 9 (see PARA 946) and sent by him to the authority: s 5(4) (as so amended). The Secretary of State or the Welsh Ministers may direct the authority to attach conditions, but not such as are inconsistent with the implementation of the conservation measures: s 5(5), (5A) (substituted and added respectively by SI 2002/3080 (England); and SI 2003/992 (Wales)). The authority may not attach any condition inconsistent with one it is directed to attach, or one which relates only or primarily to the health, safety or welfare of persons working in the zoo: Zoo Licensing Act 1981 s 5(6), (7). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

17 See the Zoo Licensing Act 1981 s 7 (amended by SI 2002/3080 (England); and SI 2003/992 (Wales)). As to extension of licences pending renewal see the Zoo Licensing Act 1981 s 6 (amended by SI 2002/3080 (England); and SI 2003/992 (Wales)).

18 Zoo Licensing Act 1981 s 4(8).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/8. ZOOS/ (2) LICENSING AND INSPECTION/945. Conservation measures for zoos.

945. Conservation measures for zoos.

The following conservation measures must be implemented in zoos¹ in accordance with the Zoo Licensing Act 1981:

- 128 (1) participating in at least one of the following:
 15. (a) research from which conservation benefits accrue to species of wild animals²;
 16. (b) training in relevant conservation skills³;
 17. (c) the exchange of information relating to the conservation of species of wild animals⁴;
 18. (d) where appropriate, breeding of wild animals in captivity⁵; and
 19. (e) where appropriate, the repopulation of an area with, or the reintroduction into the wild of, wild animals⁶;
- 129 (2) promoting public education and awareness in relation to the conservation of biodiversity, in particular by providing information about the species of wild animals kept in the zoo and their natural habitats⁷;
- 130 (3) accommodating their animals under conditions which aim to satisfy the biological and conservation requirements of the species to which they belong⁸, including:
 20. (a) providing each animal with an environment well adapted to meet the physical, psychological and social needs of the species to which it belongs⁹; and
 21. (b) providing a high standard of animal husbandry with a developed programme of preventative and curative veterinary care and nutrition¹⁰;
- 131 (4) preventing the escape of animals and putting in place measures to be taken in the event of any escape or unauthorised release of animals¹¹;
- 132 (5) preventing the intrusion of pests and vermin into the zoo premises¹²; and
- 133 (6) keeping up-to-date records of the zoo's collection¹³, including records of: (a) the numbers of different animals¹⁴; (b) acquisitions, births, deaths, disposals and escapes of animals¹⁵; (c) the causes of any such deaths¹⁶; and (d) the health of the animals¹⁷.

1 As to the meaning of 'zoo' see PARA 944 note 1.

2 Zoo Licensing Act 1981 s 1A(a)(i) (s 1A added by SI 2002/3080 (England); and SI 2003/992 (Wales)).

3 Zoo Licensing Act 1981 s 1A(a)(ii) (as added: see note 2).

4 Zoo Licensing Act 1981 s 1A(a)(iii) (as added: see note 2).

5 Zoo Licensing Act 1981 s 1A(a)(iv) (as added: see note 2).

6 Zoo Licensing Act 1981 s 1A(a)(v) (as added: see note 2).

7 Zoo Licensing Act 1981 s 1A(b) (as added: see note 2).

8 Zoo Licensing Act 1981 s 1A(c) (as added: see note 2).

- 9 Zoo Licensing Act 1981 s 1A(c)(i) (as added: see note 2).
- 10 Zoo Licensing Act 1981 s 1A(c)(ii) (as added: see note 2).
- 11 Zoo Licensing Act 1981 s 1A(d) (as added: see note 2).
- 12 Zoo Licensing Act 1981 s 1A(e) (as added: see note 2).
- 13 Zoo Licensing Act 1981 s 1A(f) (as added: see note 2).
- 14 Zoo Licensing Act 1981 s 1A(f)(i) (as added: see note 2).
- 15 Zoo Licensing Act 1981 s 1A(f)(ii) (as added: see note 2).
- 16 Zoo Licensing Act 1981 s 1A(f)(iii) (as added: see note 2).
- 17 Zoo Licensing Act 1981 s 1A(f)(iv) (as added: see note 2).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/8. ZOOS/ (2) LICENSING AND INSPECTION/946. Power of Secretary of State or Welsh Ministers to specify standards.

946. Power of Secretary of State or Welsh Ministers to specify standards.

The Secretary of State or the Welsh Ministers must compile a list of veterinary surgeons and practitioners who have experience of zoo animals and are competent to advise on conservation measures, and also of persons who are competent to inspect animals in zoos and advise on their welfare and on the management of zoos, and on the implementation of conservation measures¹.

After consulting persons on the list and such other persons as he thinks fit, the Secretary of State or the Welsh Ministers may specify standards with respect to the management of zoos and the animals in them².

1 Zoo Licensing Act 1981 s 8(1)-(3) (amended by SI 2002/3080 (England); and SI 2003/992 (Wales)). As to the conservation measures see the Zoo Licensing Act 1981 s 1A; and PARA 945. As to the meaning of 'zoo' see PARA 944 note 1. In the Zoo Licensing Act 1981, 'list' means the list compiled by the Secretary of State or the Welsh Ministers under s 8: s 21(1).

The Secretary of State or the Welsh Ministers must first consult with the presidents of the British Veterinary Association, the National Federation of Zoological Gardens and the National Zoological Association, and with such other persons as he thinks or they think fit: s 8(1). As to veterinary surgeons and veterinary practitioners see PARAS 1133-1134.

A person may appear in both parts of the list: s 8(4). The Secretary of State or the Welsh Ministers may add names or delete them: s 8(5). Persons on the list may charge the licensing authority such amounts in respect of their services and expenses as the Secretary of State or the Welsh Ministers may from time to time determine with the approval of the Minister for the Civil Service: s 8(6).

As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 Zoo Licensing Act 1981 s 9.

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Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/8. ZOOS/ (2) LICENSING AND INSPECTION/947. Inspections.

947. Inspections.

The local authority concerned must carry out periodical inspections of any licensed zoo¹. These must be made during the first year of an original licence and then not later than six months before the end of the fourth year, and in the case of a renewed or fresh licence, during the third year and not later than six months before the end of the sixth year².

Provision is made for the conduct of inspections, including the number of inspectors and the right of objection by the zoo operator to any inspector, the presence of representatives of the operator, the production of the zoo records³ and the contents of the inspector's report⁴.

The local authority may at any time carry out a special inspection of a licensed zoo if it thinks it appropriate having regard to certain specified circumstances⁵. Such an inspection must be carried out by authorised persons who appear to the authority to be competent for the purpose⁶. Both the appointed inspectors and the zoo operator must be informed of the purpose of the inspection⁷.

The local authority may at any time carry out a special inspection of a zoo which has been closed⁸ if it thinks it appropriate in view of certain specified circumstances⁹.

The local authority must make arrangements for a licensed zoo to be informally inspected once in each year in which no formal inspection¹⁰ is made¹¹.

Specific provision is made for the inspection prior to the granting, renewal or significant alteration of licences, including provision for the position where such an inspection, and an inspection of the kind described above, both fall to be made¹².

1 Zoo Licensing Act 1981 s 10(1). The local authority must give the zoo's operator at least 28 days' notice of the proposed date of inspection: s 10(2). As to the meaning of 'zoo' see PARA 944 note 1.

2 Zoo Licensing Act 1981 s 10(3).

3 This includes records required by conditions concerning the implementation of conservation measures: s 10(4)(e) (amended by SI 2002/3080 (England); and SI 2003/992 (Wales)). As to the conservation measures see PARA 945.

4 See the Zoo Licensing Act 1981 s 10(4), (5) (s 10(4) as amended: see note 3). The Secretary of State or the Welsh Ministers may give guidance in the case of disagreement as to recommendations which inspectors should give: see s 10(6). Within a month of receiving the report, the local authority must send it to the operator of the zoo and give him an opportunity to comment on it: s 10(7).

5 See the Zoo Licensing Act 1981 s 11(1) (amended by SI 2002/3080 (England); and SI 2003/992 (Wales)). The circumstances are (1) any periodical report made to the authority pursuant to the Zoo Licensing Act 1981 s 10 (see text and notes 1-4); (2) any representations made to it on behalf of a properly constituted body concerned with any aspect of the management of zoos or the welfare of animals; (3) any report made to it pursuant to an inspection in accordance with s 9A or s 12 (see text and notes 10-12); or (4) any other circumstances which in its opinion call for investigation: s 11(1)(a)-(d) (s 11(1)(c) as so amended).

6 Zoo Licensing Act 1981 s 11(2). If the purpose of the inspection relates to the health of animals, the inspectors must include (or, if one, the inspector must be) a veterinary surgeon or veterinary practitioner with experience of animals of kinds kept in the zoo: s 11(3). Such inspections are also subject to provisions of s 10(4)-(7): s 11(5). As to veterinary surgeons and veterinary practitioners see PARAS 1133-1134.

7 Zoo Licensing Act 1981 s 11(4).

8 I.e a zoo to which the Zoo Licensing Act 1981 s 16E applies; see PARA 954.

9 See the Zoo Licensing Act 1981 s 11A(1) (s 11A added by SI 2002/3080 (England); and SI 2003/992 (Wales)). The circumstances are (1) if the authority considers it appropriate having regard to its function under the Zoo Licensing Act 1981 s 16E(4) (see PARA 954) of supervising the implementation of a plan prepared under s 16E(2); (2) if it considers it appropriate having regard to its function under s 16E(6); or (3) if it considers it appropriate having regard to its function under s 16E(7) or (8): s 11A(1)(a)-(c) (as so added).

Such inspections are also subject to provisions of the Zoo Licensing Act 1981 ss 10(4), 11(2)-(4): s 11A(2) (as so added). The inspectors may require the production of all records of the zoo's collection kept by the operator of the zoo: s 11A(3) (as so added). The inspectors must send their report to the authority, and, except where the operator of the zoo cannot after reasonable inquiries have been made be found, the authority must send a copy to the operator forthwith and give him an opportunity to comment on it: s 11A(4) (as so added).

10 This is without prejudice to the Zoo Licensing Act 1981 s 9A, s 10 or s 11 (see text and notes 1-7, 12).

11 Zoo Licensing Act 1981 s 12 (amended by SI 2002/3080 (England); and SI 2003/992 (Wales)).

12 See the Zoo Licensing Act 1981 s 9A (added by SI 2002/3080 (England); and SI 2003/992 (Wales)).

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Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/8. ZOOS/ (2) LICENSING AND INSPECTION/948. Exemptions and special cases.

948. Exemptions and special cases.

The Secretary of State or the Welsh Ministers may by direction exempt a zoo¹ from the whole or part² of the Zoo Licensing Act 1981 if a local authority³ informs him or them that in its opinion such a dispensation should be made because of the small number of the kinds of animal kept there⁴. However, the Secretary of State or the Welsh Ministers may only make such a direction where he is or they are satisfied that it is not prejudicial to the protection of wild animals and the conservation of biodiversity to do so⁵.

On information from the operator that, having regard to the small size of the zoo or the small number of the kinds of animal kept there, the number of inspectors provided for by the requirement as to periodical inspections⁶ is too large, the Secretary of State or the Welsh Ministers may also exempt a zoo from such requirement, or direct that any such inspection is to be carried out by an inspector or inspectors appointed by him or them⁷.

Any direction made under the provisions described above may be revoked or varied by a further direction of the Secretary of State or the Welsh Ministers made after consultation with the local authority and such persons on the list⁸ as he thinks or they think fit⁹.

The Secretary of State or the Welsh Ministers must take reasonable steps to secure that the local authority and any person who operates the zoo are notified in writing of any direction (including a revocation or variation) made as described above¹⁰.

When a local authority is the owner of a zoo, it must, as soon as practicable after the grant of a licence, its extension or the receipt of an inspectors' report, send a copy of those documents to the Secretary of State or the Welsh Ministers¹¹.

Where the local authority is the owner of the zoo, certain necessary modifications are made to various provisions of the Zoo Licensing Act 1981, with effect that the Secretary of State or the Welsh Ministers exercise functions which would otherwise be exercisable by a local authority¹².

1 As to the meaning of 'zoo' see PARA 944 note 1. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 The partial exemption which the Secretary of State and the Welsh Ministers are empowered to grant from the Zoo Licensing Act 1981 is from either or both of s 10 and s 11 (both as amended) (see PARA 947): s 14(1)(b) (s 14(1), (3) amended, and (1A), (3A) added, by SI 2002/3080 (England); and SI 2003/992 (Wales)).

3 As to local authorities for the purpose of the Zoo Licensing Act 1981 see PARA 944 note 2.

4 Zoo Licensing Act 1981 s 14(1), (4) (s 14(1) as amended: see note 2). As to directions generally see PARA 958.

5 Zoo Licensing Act 1981 s 14(1A) (as added: see note 2).

6 See the Zoo Licensing Act 1981 s 10(4); see PARA 947.

7 See the Zoo Licensing Act 1981 s 14(2), (5).

8 As to the list see PARA 946.

9 Zoo Licensing Act 1981 s 14(3) (as amended: see note 2). However, he may only vary such a direction made where he is satisfied that it is not prejudicial to the protection of wild animals and the conservation of biodiversity to do so: s 14(3A) (as added: see note 2).

10 Zoo Licensing Act 1981 s 14(6).

11 Zoo Licensing Act 1981 s 13(1)-(3).

12 See the Zoo Licensing Act 1981 s 13(4), (5), (7) (substituted and added by SI 2002/3080 (England); and SI 2003/992 (Wales)). The provisions of the Zoo Licensing Act 1981 so modified are: ss 16(1A), (1B), 16A, 16B, 16D. Further, the provisions of ss 16C, 16E are replaced by the provisions of s 13(6), (8) (as so added). Additional provision is made for the Secretary of State or the Welsh Ministers to carry out inspections in certain circumstances: see s 13(9)-(11) (as so added).

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936-959 Animal Establishments

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Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/8. ZOOS/ (2) LICENSING AND INSPECTION/949. Alteration of licences.

949. Alteration of licences.

The local authority¹ may alter a licence at any time after its grant if it considers it necessary or desirable for ensuring the proper conduct of a zoo during the period of the licence². The licence holder must generally be given an opportunity to make representations³.

If the Secretary of State or the Welsh Ministers direct a local authority to alter a licence, the authority must give effect to such direction within a reasonable time⁴. However, the Secretary of State or the Welsh Ministers may not direct the authority to make an alteration to the licence which is inconsistent with the implementation at the zoo of the relevant conservation measures⁵.

Where an authority has made a direction concerning a licence condition which has not been complied with⁶, and the period specified in that direction⁷ has expired, and the authority is satisfied that a condition specified in that direction which requires any conservation measure⁸ to be implemented at the zoo is not met in relation to the zoo or section of it concerned⁹, then the authority must make such alterations to the licence as it considers to be necessary or desirable to ensure that the section of the zoo in relation to which it is satisfied that the condition is not met is closed permanently to the public¹⁰.

An alteration under the provisions described above may be by varying, cancelling or attaching conditions or by a combination of those methods¹¹.

1 As to local authorities for the purpose of the Zoo Licensing Act 1981 see PARA 944 note 2.

2 Zoo Licensing Act 1981 s 16(1). As to the meaning of 'zoo' see PARA 944 note 1.

3 Zoo Licensing Act 1981 s 16(2). However, where the authority proposes to make a significant alteration to a licence (other than one to which s 16(3A) (see note 4) applies, or where the alteration is in accordance with the recommendations in a report pursuant to s 9A (see PARA 947 text and note 12)), the authority must consult the holder of the licence about the proposed alteration, make arrangements for an inspection to be carried out in accordance with s 9A, and consider the report made to it pursuant to that inspection: s 16(2A), (2B) (added by SI 2002/3080 (England); and SI 2003/992 (Wales)).

4 Zoo Licensing Act 1981 s 16(3) (substituted, and s 16(3A), (3B) added, by SI 2002/3080 (England); and SI 2003/992 (Wales)). However, where he proposes to direct a significant alteration to a licence he must notify the authority of the proposed alteration, and the authority must consult the holder of the licence about the proposed alteration, make arrangements for an inspection to be carried out in accordance with the Zoo Licensing Act 1981 s 9A, and send a copy of the report made to it to the Secretary of State or the Welsh Ministers as appropriate: s 16(3A) (as so added).

As to directions generally see PARA 958.

5 Zoo Licensing Act 1981 s 16(3B) (as added: see note 4).

6 Ie under the Zoo Licensing Act 1981 s 16A(2); see PARA 950.

7 Including such a direction as varied under the Zoo Licensing Act 1981 s 16A(4); see PARA 950.

8 Ie a conservation measure as specified in the Zoo Licensing Act 1981 s 1A; see PARA 945.

9 Zoo Licensing Act 1981 s 16(1A) (s 16(1A), (1B) added by SI 2002/3080 (England); and SI 2003/992 (Wales)). 'Section of a zoo' means (1) a particular part of the zoo premises; (2) animals of a particular description in the zoo; or (3) animals of a particular description which are kept in a particular part of the zoo premises; and references to the closure of a section of a zoo to the public have a corresponding meaning: Zoo Licensing Act 1981 s 1(2C) (added by SI 2002/3080 (England); and SI 2003/992 (Wales)).

As to the modification of this provision where the owner of the zoo is the local authority see PARA 948 note 12.

10 Zoo Licensing Act 1981 s 16(1B) (as added: see note 9). An alteration to a licence under s 16(1B) has effect (1) if an appeal is brought under s 18 (as amended: see PARA 957) within the time mentioned in s 18(2), and the authority's decision is confirmed or varied, on the day following the day on which the appeal is determined, or on such other day as the court directs; (2) if such an appeal is brought within the time mentioned in s 18(2) but is subsequently abandoned, on the day following the day on which the appeal is abandoned, or on such other day as the court directs; or (3) if no appeal is brought within the time mentioned in s 18(2), on the expiration of that time: s 18(7A) (added by SI 2002/3080 (England); and SI 2003/992 (Wales)).

As to the welfare of animals following alteration of a licence under the Zoo Licensing Act 1981 s 16(1B) see PARA 954. As to the modification of this provision where the owner of the zoo is the local authority see PARA 948 note 12.

11 Zoo Licensing Act 1981 s 16(4). The authority must secure that the terms of such a condition are not inconsistent with the terms of a condition attached or varied in pursuance of a direction by the Secretary of State or the Welsh Ministers: s 16(5). The authority must secure that upon its alteration a licence contains such conditions as the authority thinks necessary or desirable for requiring the relevant conservation measures to be implemented at the zoo: s 16(4A) (added by SI 2002/3080 (England); and SI 2003/992 (Wales)). No such alteration has effect until written notification of it has been received by the holder of the licence: Zoo Licensing Act 1981 s 16(6) (amended by SI 2002/3080 (England); and SI 2003/992 (Wales)).

UPDATE

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/8. ZOOS/ (2) LICENSING AND INSPECTION/950. Enforcement of licence conditions.

950. Enforcement of licence conditions.

Where a local authority¹, after giving the licence holder an opportunity to be heard, is not satisfied that a condition attached to a licence granted by it is met in relation to the zoo or a section of it², then the authority must make a direction³ specifying:

- 134 (1) the licence condition which it is not satisfied is met⁴;
- 135 (2) whether it is not satisfied that that condition is met in relation to the zoo, or a section of the zoo (and if so, which section)⁵;
- 136 (3) steps to be taken by the licence holder to ensure that that condition is met in relation to the zoo or section within a period specified in the direction, which may not exceed two years from the date of the direction⁶; and
- 137 (4) whether the zoo or a section of it is required to be closed to the public during that period or any part of it specified in the direction⁷.

No such direction is to be made if the authority has power to make a zoo closure direction⁸, and exercises that power⁹.

Such a direction may be varied by a subsequent direction, given after consultation with the licence holder¹⁰, or revoked by a further direction of the authority¹¹.

1 As to local authorities for the purpose of the Zoo Licensing Act 1981 see PARA 944 note 2.

2 Zoo Licensing Act 1981 s 16A(1) (s 16A added by SI 2002/3080 (England); and SI 2003/992 (Wales)). As to the meaning of 'zoo' see PARA 944 note 1. As to the meaning of 'section of a zoo' see PARA 949 note 9.

As to the modification of these provisions where the owner of the zoo is the local authority see PARA 948 note 12.

3 Zoo Licensing Act 1981 s 16A(2) (as added: see note 2). As to directions generally see PARA 958.

4 Zoo Licensing Act 1981 s 16A(2)(a) (as added: see note 2).

5 Zoo Licensing Act 1981 s 16A(2)(b) (as added: see note 2).

6 Zoo Licensing Act 1981 s 16A(2)(c) (as added: see note 2).

7 Zoo Licensing Act 1981 s 16A(2)(d) (as added: see note 2).

8 See under the Zoo Licensing Act 1981 s 16B(5); see PARA 952. 'Zoo closure direction' means a direction requiring a zoo to be permanently closed to the public: s 13(12) (added by SI 2002/3080 (England); and SI 2003/992 (Wales)). As to zoo closure directions see PARA 951 et seq.

9 Zoo Licensing Act 1981 s 16A(3) (as added: see note 2).

10 See the Zoo Licensing Act 1981 s 16A(4) (as added: see note 2). The period specified in head (3) or (4) in the text may be varied, but the period as increased must not exceed two years beginning with the date of the original direction: s 16A(5) (as so added).

11 See the Zoo Licensing Act 1981 s 16A(6) (as added: see note 2).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/8. ZOOS/(3) CLOSURE OF ZOOS/951. Mandatory zoo closure directions for licensed zoos.

(3) CLOSURE OF ZOOS

951. Mandatory zoo closure directions for licensed zoos.

A local authority must make a zoo closure direction¹ in respect of a licensed zoo² where:

- 138 (1) it has made a direction as to the enforcement of licence conditions³;
- 139 (2) the period specified in the direction⁴ has expired⁵; and
- 140 (3) it is satisfied, after giving the licence holder an opportunity to be heard, that a condition specified in that direction and in respect of which the whole zoo was specified, and which requires any relevant conservation measure⁶ to be implemented at the zoo, is not met in relation to the zoo⁷.

Further, an authority must make a zoo closure direction where it is satisfied, after reasonable inquiries have been made, that the licence holder cannot be found⁸. Additionally, a zoo closure direction must be made where, after giving the licence holder an opportunity to be heard, the authority is satisfied that members of the public have had access to the zoo on fewer than seven days in the period of 12 months ending on the date on which the authority determines that it is so satisfied, and it does not appear to it that it is the licence holder's intention that members of the public will have access to it on seven days or more during any future period of 12 months⁹.

Where the authority makes a zoo closure direction under these provisions, the zoo's licence is revoked from the date on which the direction has effect¹⁰.

1 As to the meaning of 'zoo closure direction' see PARA 950 note 8. As to local authorities for the purpose of the Zoo Licensing Act 1981 see PARA 944 note 2.

2 Zoo Licensing Act 1981 s 16B(1) (s 16B added by SI 2002/3080 (England); and SI 2003/992 (Wales)). As to the meaning of 'zoo' see PARA 944 note 1. The reference to a licensed zoo is to one which has been licensed under the Zoo Licensing Act 1981: s 16B(1) (as so added). As to directions generally see PARA 958.

As to the modification of these provisions where the owner of the zoo is the local authority see PARA 948 note 12.

3 Zoo Licensing Act 1981 s 16B(1)(a) (as added: see note 2). As to a direction enforcing licence conditions see PARA 950.

4 I.e. as specified in the Zoo Licensing Act 1981 s 16A(2)(c); see PARA 950 text and note 6. This includes a direction as varied by s 16A(4) (see PARA 950 text and note 10): s 16B(1)(b) (as added: see note 2).

5 Zoo Licensing Act 1981 s 16B(1)(b) (as added: see note 2).

6 I.e. a conservation measure as specified in the Zoo Licensing Act 1981 s 1A; see PARA 945.

7 Zoo Licensing Act 1981 s 16B(1)(c) (as added: see note 2).

8 Zoo Licensing Act 1981 s 16B(2) (as added: see note 2).

9 Zoo Licensing Act 1981 s 16B(3) (as added: see note 2).

10 See the Zoo Licensing Act 1981 s 16B(8) (as added: see note 2).

A zoo closure direction has effect if an appeal is brought under s 18 (see PARA 957) within the time mentioned in s 18(2), and the authority's decision is confirmed or varied, on the day following the day on which the appeal is

determined, or on such other day as the court directs; if an appeal is brought under s 18 within the time mentioned in s 18(2) but is subsequently abandoned, on the day following the day on which the appeal is abandoned, or on such other day as the court directs; or if no appeal is brought within the time mentioned in s 18(2), on the expiration of that time: s 18(10) (added by SI 2002/3080 (England); and SI 2003/992 (Wales)).

UPDATE

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/8. ZOOS/(3) CLOSURE OF ZOOS/952. Discretionary zoo closure directions for licensed zoos.

952. Discretionary zoo closure directions for licensed zoos.

A local authority may make a zoo closure direction¹ in respect of a licensed zoo² where:

- 141 (1) it has made a direction as to the enforcement of licence conditions³;
- 142 (2) the period specified in the direction⁴ has expired⁵; and
- 143 (3) it is satisfied, after giving the licence holder an opportunity to be heard, that a condition specified in that direction, other than one which requires any relevant conservation measure⁶ to be implemented at the zoo, is not met in relation to the zoo or any section of it⁷.

The authority may, after giving the licence holder an opportunity to be heard, make a zoo closure direction in respect of a licensed zoo⁸ if:

- 144 (a) any reasonable requirements relating to the premises or conduct of the zoo notified by them to the licence holder in consequence of the report of any inspection⁹ are not complied with within such time as is reasonable in the circumstances¹⁰;
- 145 (b) it is satisfied that the zoo has been conducted in a disorderly manner or so as to cause a nuisance¹¹;
- 146 (c) the licence holder (or, where the licence holder is a body corporate, the body or any director, manager, secretary or other similar officer of the body) is convicted of a specified offence¹²; or
- 147 (d) any person who, to the knowledge of the licence holder, has been so convicted is employed as a keeper in the zoo¹³.

However, the authority may not make a direction under heads (a) to (d) above if a direction as to the enforcement of licence conditions is in force, and when that direction was made there were grounds on which the authority could have made a zoo closure direction under heads (a) to (d), but the authority chose not to do so, and there are no new grounds within those heads¹⁴.

No zoo closure direction may be made under head (a) or (b) above on grounds involving the care or treatment of animals unless the authority has first consulted such persons on the list¹⁵ as the Secretary of State or the Welsh Ministers may nominate for this purpose¹⁶.

Where the authority makes a zoo closure direction under these provisions, the zoo's licence is revoked from the date on which the direction has effect¹⁷.

¹ As to the meaning of 'zoo closure direction' see PARA 950 note 8. As to local authorities for the purpose of the Zoo Licensing Act 1981 see PARA 944 note 2.

² Zoo Licensing Act 1981 s 16B(4) (s 16B added by SI 2002/3080 (England); and SI 2003/992 (Wales)). As to the meaning of 'zoo' see PARA 944 note 1. The reference to a licensed zoo is to one which has been licensed under the Zoo Licensing Act 1981: s 16B(1) (as so added). As to directions generally see PARA 958.

As to the modification of these provisions where the owner of the zoo is the local authority see PARA 948 note 12.

³ Zoo Licensing Act 1981 s 16B(4)(a) (as added: see note 2). As to a direction enforcing licence conditions see PARA 950.

4 le as specified in the Zoo Licensing Act 1981 s 16A(2)(c); see PARA 950 text and note 6. This includes a direction as varied by s 16A(4) (see PARA 950 text and note 10); s 16B(4)(b) (as added: see note 2).

5 Zoo Licensing Act 1981 s 16B(4)(b) (as added: see note 2).

6 le a conservation measure as specified in the Zoo Licensing Act 1981 s 1A; see PARA 945.

7 See the Zoo Licensing Act 1981 s 16B(4)(c) (as added: see note 2). As to the meaning of 'section of a zoo' see PARA 949 note 9.

8 Zoo Licensing Act 1981 s 16B(5) (as added: see note 2).

9 As to inspections under the Act see PARA 947.

10 Zoo Licensing Act 1981 s 16B(5)(a) (as added: see note 2).

11 Zoo Licensing Act 1981 s 16B(5)(b) (as added: see note 2).

12 Zoo Licensing Act 1981 s 16B(5)(c) (as added: see note 2). The offences referred to are those mentioned in s 4(4); see PARA 944 text and note 13.

13 Zoo Licensing Act 1981 s 16B(5)(d) (as added: see note 2). As to the meaning of 'keeper' see PARA 944 note 12.

14 Zoo Licensing Act 1981 s 16B(6) (as added: see note 2).

15 As to the list see PARA 946.

16 Zoo Licensing Act 1981 s 16B(7) (as added: see note 2).

17 See the Zoo Licensing Act 1981 s 16B(8) (as added: see note 2). As to when a zoo closure direction has effect see PARA 951 note 10.

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/8. ZOOS/(3) CLOSURE OF ZOOS/953. Zoo closure directions for zoos without licences.

953. Zoo closure directions for zoos without licences.

If a local authority¹ is satisfied, after reasonable inquiries have been made, that the operator of a zoo²:

- 148 (1) which is being operated without a licence³;
- 149 (2) in relation to which no exemption⁴ has effect⁵; and
- 150 (3) which appears to the local authority to have been operated in contravention of the Zoo Licensing Act 1981 because, during the period of 12 months ending with the date on which the authority determines that it so appears to it, members of the public have had access to it on more days than permitted⁶,

cannot be found, it must make a zoo closure direction in respect of the zoo⁷.

Otherwise, unless the authority informs the Secretary of State or the Welsh Ministers that in its opinion an exemption should be made in respect of such a zoo, and he does or they do so, the authority must give to the operator at least 35 days' notice in writing of its intention to make a zoo closure direction in respect of the zoo, and informing him of his right to be heard⁸. Where such notice has been given, the authority must give the operator an opportunity to be heard; and if, after the expiration of the period referred to above and after giving the operator an opportunity to be heard, it does not appear to the authority that the view it reached as mentioned in head (3) above was incorrect, it must make a zoo closure direction in respect of the zoo, unless before the expiration of that period notice has been given to the authority of the operator's intention to make an application for a licence⁹. Where notice is given to the authority of intention to make an application for a licence for the zoo, but such application is not made within three months, or the application for a licence for that zoo is refused and no appeal is brought against the refusal within time, or an appeal is abandoned or unsuccessful, the authority must make a zoo closure direction in respect of the zoo¹⁰.

1 As to local authorities for the purpose of the Zoo Licensing Act 1981 see PARA 944 note 2.

2 As to the meaning of 'zoo' see PARA 944 note 1.

3 Zoo Licensing Act 1981 s 16C(1)(a) (s 16C added by the Zoo Licensing Act 1981 (Amendment) (England and Wales) Regulations 2002, SI 2002/3080, reg 21; Zoo Licensing Act 1981 (Amendment) (Wales) Regulations 2003, SI 2003/992, reg 2(1), Schedule para 18). As to the grant of licences under the Zoo Licensing Act 1981 see PARA 944.

As to the replacement of these provisions where the owner of the zoo is the local authority see PARA 948 note 12.

4 ie a direction under the Zoo Licensing Act 1981 s 14(1) in respect of the whole of a zoo (see PARA 948).

5 Zoo Licensing Act 1981 s 16C(1)(b) (as added: see note 3).

6 Zoo Licensing Act 1981 s 16C(1)(c) (as added: see note 3).

7 Zoo Licensing Act 1981 s 16C(2) (as added: see note 3). As to when a zoo closure direction has effect see PARA 951 note 10. As to directions generally see PARA 958. As to the meaning of 'zoo closure direction' see PARA 950 note 8.

8 Zoo Licensing Act 1981 s 16C(3) (as added: see note 3). As to the Secretary of State and the transfer of functions to the Welsh Ministers see PARAS 705-706.

9 Zoo Licensing Act 1981 s 16C(4) (as added: see note 3).

10 Zoo Licensing Act 1981 s 16C(5) (as added: see note 3).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/8. ZOOS/(3) CLOSURE OF ZOOS/954. Welfare of animals following closure of zoos.

954. Welfare of animals following closure of zoos.

As soon as reasonably practicable after the relevant date¹, the operator² of a relevant zoo³ must give to the authority a plan of the arrangements he proposes to make, in relation to the animals kept in the zoo, for their future care or for their disposal and for their care until they are disposed of⁴. He must supply the authority with any information it requests about the care or disposal of animals kept in the zoo⁵.

Where the authority notifies the operator that it approves such a plan, he must implement it under the supervision of the authority⁶. Except with the agreement of the authority, the operator must not dispose of any animal kept in the zoo before such a plan has been approved by the authority, or dispose of any animal kept in the zoo otherwise than in accordance with a plan so approved⁷.

Where:

- 151 (1) the authority is not satisfied with such a plan;
- 152 (2) the authority is not satisfied with the way in which such a plan is being implemented;
- 153 (3) the operator of the zoo has not prepared such a plan within a reasonable period after the relevant date; or
- 154 (4) the authority considers that urgent steps need to be taken by the operator to safeguard the welfare of animals kept in the zoo,

the authority may, after giving the operator an opportunity to be heard, make a direction in such terms as it sees fit as to the future care of the animals kept in the zoo, or for their disposal and for their care until they are disposed of⁸. Where the zoo operator has not complied with such a direction to the authority's satisfaction, or the authority considers that urgent steps need to be taken by them to safeguard the welfare of animals kept in the zoo, the authority must, after giving the operator an opportunity to be heard, make arrangements for the future care of the animals kept in the zoo, or for their disposal and for their care until they are disposed of⁹.

Where the authority is satisfied, after reasonable inquiries have been made, that the operator of the zoo cannot be found, it must make arrangements for the future care of the animals kept in the zoo, or for their disposal and for their care until they are disposed of¹⁰.

Arrangements for the care or disposal of animals under these provisions must not be prejudicial to the protection of wild animals and the conservation of biodiversity¹¹.

The Zoo Licensing Act 1981 ceases to apply to a zoo when the local authority has notified the operator¹² in writing that it is satisfied that all animals which are to be disposed of pursuant to the provisions described above have been disposed of, and satisfactory arrangements for the care of any animals kept in the zoo which are not to be disposed of are in effect, and there are reasonable grounds for believing that satisfactory arrangements will continue to be maintained for such animals¹³.

¹ ie the date from which the Zoo Licensing Act 1981 s 16E applies. That provision applies (1) to a zoo in respect of which a zoo closure direction has been made (see PARAS 951-953), from the date on which the direction has effect (see PARA 951 note 10); (2) to a zoo whose licence has expired or been surrendered, from the date of its expiration or surrender (as the case may be); and (3) to a section of a zoo which is closed

permanently to the public by virtue of alterations to the zoo's licence under s 16(1B) (see PARA 949), from the date on which those alterations have effect (see PARA 949 note 10): s 16D(1), (3) (ss 16D, 16E added by SI 2002/3080 (England); and SI 2003/992 (Wales)). As to the meaning of 'zoo' see PARA 944 note 1; as to the meaning of 'section of a zoo' see PARA 949 note 9; as to the meaning of 'zoo closure direction' see PARA 950 note 8.

Where the Zoo Licensing Act 1981 s 16E applies by virtue of s 16D(3), references in s 16E to a zoo must be read as references to that section of the zoo which is closed permanently to the public: s 16E(12) (as so added).

If a section of a zoo which was closed permanently to the public by virtue of alterations to the zoo's licence under s 16(1B) reopens pursuant to further alterations to the licence, s 16E ceases to apply to that section of the zoo: s 16D(4) (as so added).

As to the modification of s 16D, and the replacement of s 16E, where the owner of the zoo is the local authority see PARA 948 note 12.

2 The Zoo Licensing Act 1981 s 16E(2)-(7) applies unless the local authority is satisfied, after reasonable inquiries have been made, that the operator of the zoo cannot be found: s 16E(1) (as added: see note 1). As to local authorities for the purpose of the Zoo Licensing Act 1981 see PARA 944 note 2.

3 le a zoo to which the Zoo Licensing Act 1981 s 16E applies: see note 1.

4 Zoo Licensing Act 1981 s 16E(1), (2) (as added: see note 1). See also note 2.

5 Zoo Licensing Act 1981 s 16E(3) (as added: see note 1). See also note 2.

6 Zoo Licensing Act 1981 s 16E(4) (as added: see note 1). See also note 2.

7 Zoo Licensing Act 1981 s 16E(5) (as added: see note 1). See also note 2.

8 Zoo Licensing Act 1981 s 16E(6) (as added: see note 1). See also note 2. The authority may make a direction varying or revoking such a direction (including such a direction as previously varied), but, unless it is satisfied, after reasonable inquiries have been made, that the operator cannot be found, it must not do so without first giving him an opportunity to be heard: s 16E(11) (as so added). As to directions generally see PARA 958.

9 Zoo Licensing Act 1981 s 16E(7) (as added: see note 1). See also note 2. For the purpose of giving effect to arrangements under s 16E(7) or (8) the authority may care for any animal on the premises of the zoo, or remove any animal found on the premises of the zoo and either retain it in the authority's possession or dispose of it: s 16E(9) (as so added), which is expressed to be subject to s 16G; see PARA 956.

As to the powers of the local authority in pursuance of such arrangements see PARAS 955-956.

10 Zoo Licensing Act 1981 s 16E(8) (as added: see note 1). See also note 9.

11 Zoo Licensing Act 1981 s 16E(10) (as added: see note 1).

12 Or, where the operator cannot be found, any person appearing to the authority to be responsible for the zoo: Zoo Licensing Act 1981 s 16D(2) (as added: see note 1).

13 Zoo Licensing Act 1981 s 16D(2) (as added: see note 1).

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/8. ZOOS/(3) CLOSURE OF ZOOS/955. Power of authority to dispose of animals.

955. Power of authority to dispose of animals.

Where a local authority¹ is required to make arrangements for the care or disposal of animals following closure of a zoo², the authority may sell³ or otherwise dispose of any animal in relation to which arrangements are required to be made⁴ if:

- 155 (1) after making reasonable inquiries it is satisfied that the animal is owned by the operator of the zoo⁵;
- 156 (2) after making reasonable inquiries it is unable to identify or unable to find the animal's owner⁶;
- 157 (3) it has obtained the consent of the owner of the animal⁷;
- 158 (4) the owner of the animal has been asked for his consent before a date specified in the request, but that date has passed and the authority has not received it, and the owner has not arranged to take possession of the animal or arranged for such possession to be taken by another person⁸; or
- 159 (5) the owner has arranged to take possession of the animal or for its possession to be taken by another person, but the date for implementation of the arrangements has passed and they remain unimplemented⁹.

When the authority has sold all the animals which are to be sold¹⁰, it must pay the operator of the zoo a sum equal to the total proceeds of the sales of animals which it is satisfied were owned by him immediately before the sale¹¹, less any part of the charge which the authority is entitled to make¹² which has not been paid¹³.

Nothing in these provisions prevents an authority from making arrangements, on the advice of a veterinary surgeon or practitioner¹⁴, for an animal to be put down without delay where it is necessary or expedient to do so in the interests of its welfare¹⁵.

1 As to local authorities for the purpose of the Zoo Licensing Act 1981 see PARA 944 note 2.

2 I.e. under the Zoo Licensing Act 1981 s 16E(7) or (8): see PARA 954 text and notes 9-10. As to the meaning of 'zoo' see PARA 944 note 1.

3 Where an animal is sold or given away under this provision, any person to whom the animal is sold or given has a good title to it: Zoo Licensing Act 1981 s 16F(3) (s 16F added by SI 2002/3080 (England); and SI 2003/992 (Wales)).

4 Zoo Licensing Act 1981 s 16F(1), (2) (as added: see note 3).

5 Zoo Licensing Act 1981 s 16F(2)(a) (as added: see note 3).

6 Zoo Licensing Act 1981 s 16F(2)(b) (as added: see note 3).

7 Zoo Licensing Act 1981 s 16F(2)(c) (as added: see note 3).

8 Zoo Licensing Act 1981 s 16F(2)(d) (as added: see note 3).

9 Zoo Licensing Act 1981 s 16F(2)(e) (as added: see note 3).

10 Zoo Licensing Act 1981 s 16F(4) (as added: see note 3).

11 This applies whether or not the authority was so satisfied when it exercised its power of sale: see the Zoo Licensing Act 1981 s 16F(6) (as added: see note 3).

12 le under the Zoo Licensing Act 1981 s 15(2A)(d). As to the local authority's power to make charges under the Act see PARA 944 note 14.

13 Zoo Licensing Act 1981 s 16F(5), (6) (as added: see note 3). Where the authority has identified a person other than the operator whom it is satisfied was the owner of an animal immediately before its sale, it must pay to that person a sum equal to the proceeds of the sale of that animal, less the costs incurred by it in connection with the sale and in caring for the animal before the sale: s 16F(7) (as so added). However, if the person to whom the authority is required to make a payment under s 16F(5) or (7) cannot be found before the end of the period of four months beginning with the date of the sale of the last animal which is to be sold, the proceeds of sale vest in the authority: s 16F(8) (as so added).

Any remaining proceeds of the sales vest in the authority: s 16F(9) (as so added).

An authority must make any payment required under s 16F(5) or (7) before the end of the period of four months beginning with the date of the sale of the last animal which is to be sold, but must not make such a payment before the end of the period of one month beginning with the date of that sale: s 16F(10) (as so added).

14 As to veterinary surgeons and veterinary practitioners see PARAS 1133-1134.

15 Zoo Licensing Act 1981 s 16F(11) (as added: see note 3).

UPDATE

936-959 Animal Establishments

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/8. ZOOS/(3) CLOSURE OF ZOOS/956. Powers of entry.

956. Powers of entry.

For the purpose of giving effect to arrangements for the care or disposal of animals following closure of a zoo¹, a person duly authorised by a local authority² for these purposes may, on producing his authority if so required, enter the premises of the zoo³ for the purposes of (1) inspecting any animal found there to which the arrangements relate; (2) inspecting the accommodation of any such animal; (3) caring for any such animal; or (4) removing any such animal⁴.

If a justice of the peace is satisfied by sworn information in writing that:

- 160 (a) it is necessary or desirable for the purpose of giving effect to such arrangements for a person duly authorised by the authority to enter the premises of the zoo for any of the purposes mentioned above; and
- 161 (b) either (i) any part of the premises to which admission for any of those purposes is sought is used as a private dwelling; or (ii) admission to the premises or any part of the premises for any of those purposes has been refused,

he may grant a warrant authorising that person to enter the premises, or (as the case may be) the part of the premises used as a private dwelling or to which admission has been refused, for all or any of those purposes, with or without constables and any other persons who may be necessary, and if need be by reasonable force⁵.

¹ See under the Zoo Licensing Act 1981 s 1E(7) or (8): see PARA 954 text and notes 9-10. As to the meaning of 'zoo' see PARA 944 note 1.

² As to local authorities for the purpose of the Zoo Licensing Act 1981 see PARA 944 note 2.

³ This does not authorise entry into any part of the premises of the zoo which is used as a private dwelling: Zoo Licensing Act 1981 s 16G(2) (s 16G added by SI 2002/3080 (England); and SI 2003/992 (Wales)).

⁴ Zoo Licensing Act 1981 s 16G(1) (as added: see note 3).

⁵ Zoo Licensing Act 1981 s 16G(3) (as added: see note 3). Such a warrant must also specify the length of time for which it is valid, and the times at which entry may be effected, and may contain such restrictions as the justice thinks fit: s 16G(4) (as so added). A person duly authorised for the purposes of s 16G(3) must, if so required, produce his authority and warrant before entering the premises of the zoo or part of the premises to which the warrant relates: s 16G(5) (as so added).

UPDATE

936-959 Animal Establishments

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/8. ZOOS/(4) APPEALS/957. Appeals.

(4) APPEALS

957. Appeals.

There is a right of appeal to a magistrates' court¹ against:

- 162 (1) the refusal to grant a licence²;
- 163 (2) any condition attached to a licence³;
- 164 (3) any variation or cancellation of a condition⁴;
- 165 (4) the refusal to approve the transfer of a licence⁵;
- 166 (5) certain directions⁶ or variations thereof⁷;
- 167 (6) a zoo closure direction⁸;
- 168 (7) the refusal to approve a plan prepared as to the future care or disposal of animals following closure of a zoo⁹;
- 169 (8) a direction, or variation thereof, as to the future care or disposal of animals following closure of a zoo¹⁰; or
- 170 (9) any arrangements made by the local authority as to the care or disposal of animals¹¹.

An appeal must be brought within 28 days from receipt of written notification of the authority's decision, and will lie whether or not the authority's decision was made pursuant to a direction by the Secretary of State or the Welsh Ministers¹².

On an appeal, the court may confirm, vary or reverse the local authority's decision and may give such directions as it thinks proper¹³.

Where the attachment or variation of a condition requires the carrying out of works, the condition or variation will have no effect during the appeal period, nor, where an appeal is brought, before it is determined or abandoned¹⁴.

Certain directions¹⁵ have no effect during the appeal period, nor, where an appeal is brought, before it is determined or abandoned¹⁶.

1 Zoo Licensing Act 1981 s 18(1) (substituted by SI 2002/3080 (England); and SI 2003/992 (Wales); and amended by the Courts Act 2003 s 109(1), (3), Sch 8 para 258, Sch 10).

The appeal is by way of complaint and the Magistrates' Courts Act 1980 applies to the proceedings: Zoo Licensing Act 1981 s 18(5).

2 Zoo Licensing Act 1981 s 18(1)(a) (as substituted: see note 1). As to the grant of licences for zoos see PARA 944 et seq.

3 Zoo Licensing Act 1981 s 18(1)(b) (as substituted: see note 1).

4 Zoo Licensing Act 1981 s 18(1)(c) (as substituted: see note 1).

5 Zoo Licensing Act 1981 s 18(1)(d) (as substituted: see note 1). As to transfer of licences see s 7; and PARA 944 text and note 17.

6 I.e. a direction under the Zoo Licensing Act 1981 s 13(8)(c) or s 16A(2): see PARA 950.

7 Zoo Licensing Act 1981 s 18(1)(e) (as substituted: see note 1).

8 Zoo Licensing Act 1981 s 18(1)(f) (as substituted: see note 1). As to the meaning of 'zoo closure direction' see PARA 950 note 8. As to zoo closure directions see PARA 951 et seq.

9 Zoo Licensing Act 1981 s 18(1)(g) (as substituted: see note 1). As to such plans see s 16E(2); and PARA 954.

10 Zoo Licensing Act 1981 s 18(1)(h) (as substituted: see note 1). As to such directions see s 16E(6); and PARA 954.

11 Zoo Licensing Act 1981 s 18(1)(i) (as substituted: see note 1). As to such arrangements see s 16E(7), (8); and PARA 954.

12 Zoo Licensing Act 1981 s 18(2) (amended by SI 2002/3080 (England); and SI 2003/992 (Wales)). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

13 Zoo Licensing Act 1981 s 18(3).

14 Zoo Licensing Act 1981 s 18(7).

15 If a direction under the Zoo Licensing Act 1981 s 16A(2)(d) which requires the zoo or a section of it to be closed to the public, a direction under s 13(8)(c), s 16A(2) or s 16E(6) which imposes a requirement on the operator of the zoo to carry out works he would not otherwise be required to carry out, and a direction under s 13(8)(c) or s 16E(6) which imposes a requirement to dispose of any animals, or any variation of such a direction: s 18(8) (s 18(8), (9) substituted by SI 2002/3080 (England); and SI 2003/992 (Wales)).

16 See the Zoo Licensing Act 1981 s 18(9) (as substituted: see note 15).

UPDATE

936-959 Animal Establishments

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/8. ZOOS/(5) DIRECTIONS AND OFFENCES/958. General provisions concerning directions.

(5) DIRECTIONS AND OFFENCES

958. General provisions concerning directions.

Where a local authority¹ makes a direction under the Zoo Licensing Act 1981, it must take reasonable steps to secure that the operator of the zoo² is notified in writing of it³. However, if the operator of the zoo cannot, after reasonable inquiries have been made, be found, the authority must take reasonable steps to secure that any person appearing to it to be responsible for the zoo is notified in writing of the direction⁴.

The operator of a zoo or other person notified in writing of a direction must comply with a direction made in respect of that zoo⁵.

- 1 As to local authorities for the purpose of the Zoo Licensing Act 1981 see PARA 944 note 2.
- 2 As to the meaning of 'zoo' see PARA 944 note 1.
- 3 Zoo Licensing Act 1981 s 19A(1) (s 19A added by SI 2002/3080 (England); and SI 2003/992 (Wales)).
- 4 Zoo Licensing Act 1981 s 19A(2) (as added: see note 3).
- 5 Zoo Licensing Act 1981 s 19A(3) (as added: see note 3).

UPDATE

936-959 Animal Establishments

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/8. ZOOS/(5) DIRECTIONS AND OFFENCES/959. Offences and penalties.

959. Offences and penalties.

The following offences under the Zoo Licensing Act 1981 are punishable on summary conviction with a fine not exceeding level 4 on the standard scale¹:

- 171 (1) operating a zoo without a licence²;
- 172 (2) failure without reasonable excuse to comply with any condition attached to a zoo's licence³;
- 173 (3) intentionally obstructing a person acting in pursuance of an authorisation to enter premises⁴;
- 174 (4) failure by a licence holder, without reasonable excuse, to comply with a requirement in a direction to close the zoo or a section of it to the public in accordance with the direction⁵;
- 175 (5) failure without reasonable excuse, by a person notified in writing of a zoo closure direction, to comply with that direction⁶;
- 176 (6) following closure of a zoo, disposal by the operator, without reasonable excuse and without the agreement of the authority, of any animal kept in the zoo before a plan for the future care or disposal of animals has been approved by the authority, or otherwise than in accordance with such a plan which has been approved⁷;
- 177 (7) failure by an operator, without reasonable excuse, to comply with a direction as to the future care and welfare of animals of which he has had written notification⁸.

The following offences are punishable on summary conviction with a fine not exceeding level 3 on the standard scale⁹:

- 178 (a) intentionally obstructing an inspector acting under the Act¹⁰;
- 179 (b) failure without reasonable excuse to comply with a local authority's request for information regarding the care or disposal of animals¹¹;
- 180 (c) failure without reasonable excuse to display the zoo licence or a copy of it publicly at each public entrance to the zoo¹².

Where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributed to any neglect on the part of, any director, manager, secretary or any other similar officer of the body corporate, or any person purporting to act in any such capacity, he is also guilty of the offence and liable to be proceeded against¹³.

1 Zoo Licensing Act 1981 s 19(4) (s 19(4) amended, and s 19(3A)-(3G) added, by SI 2002/3080 (England); and SI 2003/992 (Wales)). As to the standard scale see PARA 738 note 1.

2 Zoo Licensing Act 1981 s 19(1). As to the requirement for a licence see PARA 944.

3 Zoo Licensing Act 1981 s 19(2). As to licence conditions see PARA 944.

4 Zoo Licensing Act 1981 s 19(3A) (as added: see note 1). See s 16G(1), (3); and PARA 956.

5 Zoo Licensing Act 1981 s 19(3B) (as added: see note 1). See s 16A(2)(d); and PARA 950.

6 Zoo Licensing Act 1981 s 19(3C) (as added: see note 1). See s 19A(1), (2); and PARA 958. As to the meaning of 'zoo closure direction' see PARA 950 note 8.

7 Zoo Licensing Act 1981 s 19(3E) (as added: see note 1). See s 16E(2), (5); and PARA 954.

8 Zoo Licensing Act 1981 s 19(3F) (as added: see note 1). See s 16E(6); and PARA 954.

9 Zoo Licensing Act 1981 s 19(4) (as amended: see note 1).

10 Zoo Licensing Act 1981 s 19(3). As to inspectors see PARA 947.

11 Zoo Licensing Act 1981 s 19(3D) (as added: see note 1). See s 16E(3); and PARA 954.

12 Zoo Licensing Act 1981 s 19(3G) (as added: see note 1). See s 4(8); and PARA 944.

13 Zoo Licensing Act 1981 s 19(5).

UPDATE

936-959 Animal Establishments

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/9. TRADE IN ENDANGERED SPECIES/(1) TRADE IN ENDANGERED SPECIES WITHIN THE EUROPEAN COMMUNITY/960. Scope of Convention on International Trade in Endangered Species (CITES).

9. TRADE IN ENDANGERED SPECIES

(1) TRADE IN ENDANGERED SPECIES WITHIN THE EUROPEAN COMMUNITY

960. Scope of Convention on International Trade in Endangered Species (CITES).

International trade in endangered species, in so far as it is conducted within the European Union, is now regulated by a European Regulation giving effect to the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (known commonly as 'CITES')¹. This legislation is directly applicable in member states², and is enforced in the United Kingdom by regulations³.

Whereas member states may have additional, and stricter, controls over the trade in animals covered by this legislation⁴, it is clear that regard must be had to the requirements of free trade within the Community; thus controls which are stricter than the relevant legislation, and which are incompatible with the EC Treaty, may be difficult to justify⁵.

Member states fulfil their obligations under the Regulation through the agency of 'management authorities' and 'scientific authorities'⁶; and by controlling the places at which species within its scope may be introduced to or exported from the Community⁷. They are under a duty to monitor compliance, and in the event of infringement to take steps to ensure compliance or institute proceedings⁸. They are also under a duty of communication to each other, to the Commission and to the public⁹.

The Regulation establishes a Scientific Review Group, and a Committee on Trade in Wild Flora and Fauna, each of which is composed of representatives of the member states and chaired by a representative of the Commission¹⁰.

1 I.e. EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1), on the protection of species of wild fauna and flora by regulating trade therein.

The species of fauna (and flora) affected by these provisions are listed in the Annexes to the Regulation (substituted by EC Commission Regulation 1332/2005 (OJ L215, 19.8.2005, p 1)); as set out below.

Annex A contains the species listed in Appendix I to CITES for which the member states have not entered a reservation; and any species (1) which is, or may be, in demand for utilisation in the Community or for international trade and which is either threatened with extinction or so rare that any level of trade would imperil the survival of the species; or (2) which is in a genus of which most of the species or which is a species of which most of the subspecies are listed in Annex A in accordance with the criteria in subparagraphs (a) or (b)(i) and whose listing in the Annex is essential for the effective protection of those taxa: EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 3(1). However, save where art 8 applies (see PARA 963), specimens of species listed in Annex A that have been born and bred in captivity or artificially propagated must be treated in accordance with the provisions applicable to specimens of species listed in Annex B: art 7(1)(a).

Annex B contains (a) the species listed in Appendix II to CITES, other than those listed in Annex A, for which the member states have not entered a reservation; (b) the species listed in Appendix I to the Convention for which a reservation has been entered; (c) any other species not listed in Appendix I or II to the Convention (i) which is subject to levels of international trade that might not be compatible with its survival or with the survival of populations in certain countries, or with the maintenance of the total population at a level consistent with the role of the species in the ecosystems in which it occurs; or (ii) whose listing in the Annex for reasons of similarity in appearance to other species listed in Annex A or Annex B, is essential in order to ensure the effectiveness of controls on trade in specimens of such species; and (d) species in relation to which it has been established that the introduction of live specimens into the natural habitat of the Community would constitute

an ecological threat to wild species of fauna and flora indigenous to the Community: EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 3(2).

Annex C contains the species listed in Appendix III to CITES, other than those listed in Annex A or B, for which the member states have not entered a reservation, and the species listed in Appendix II to CITES for which a reservation has been entered: EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 3(3).

Annex D contains species not listed in Annexes A to C which are imported into the Community in such numbers as to warrant monitoring, and the species listed in Appendix III to CITES for which a reservation has been entered: EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 3(4).

Where the conservation status of species covered by the Regulation warrants their inclusion in one of the Appendices to CITES, the member states must contribute to the necessary amendments: EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 3(5).

Detailed implementation of EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) is effected by EC Council Regulation 865/2006 (OJ L166 19.6.2006, p 1).

2 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 22. Detailed implementation of EC Council Regulation 338/97 is effected by EC Council Regulation 865/2006 (OJ L166 19.6.2006, p 1). A measure concerned with the conservation of biodiversity among animals is permitted under EC Treaty art 30 provided the measure is appropriate and proportionate: Case C-67/97 *Criminal Proceedings against Bluhme* [1998] ECR I-8033, [1999] 1 CMLR 612, ECJ.

3 See the Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372 (amended by SI 2005/1674; and SI 2007/2952), which impose sanctions for the matters mentioned in EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 16; and PARA 965. See also the Control of Trade in Endangered Species (Fees) Regulations 1997, SI 1997/1421 (amended by SI 1997/1971), which prescribe certain fees payable under this regime.

4 Without prejudice to stricter measures which the member states may adopt or maintain, permits and certificates issued by the competent authorities of the member states in accordance with EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) are valid throughout the Community: see art 11(1). However, a permit or certificate (or subsequent permit or certificate) issued on the false premise that the conditions for it were met, is void, and specimens relating thereto are liable to seizure: see art 11(2)(a), (b).

5 See Case C-510/99 *Criminal Proceedings against Tridon (Fédération Départementale des Chasseurs de l'Isère, third parties)* [2002] All ER (EC) 534, [2001] ECR I-7777, ECJ.

6 As to the designation of management and scientific authorities see EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 13. In the United Kingdom, the designated management authority is the Department of the Environment, Food and Rural Affairs, and the designated scientific authority, in relation to animals, is the Joint Nature Conservation Committee. That authority has sole responsibility for the issue of permits, etc, and a challenge to a refusal to do so cannot be made by way of claiming against the Customs and Excise Commissioners for the return of goods seized following the refusal: *Customs and Excise Comrs v Ray* [2000] 3 CMLR 1095.

7 As to the designation of customs offices see EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 12.

8 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 14(1). Member states must also investigate matters brought to their attention by the Commission: art 14(2).

9 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 15.

10 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) arts 2(a), 17-19 (art 18 substituted by European Parliament and Commission Regulation 1882/2003 (OJ L284, 31.10.2003, p 1)).

UPDATE

960-965 Trade in endangered species within the European Community

EC Council Regulation 338/97 Annexes: replaced by EC Commission Regulation 318/2008 (OJ L95, 8.4.2008, p 3); EC Commission Regulation 407/2009 (OJ L123, 19.5.2009, p 3).

960 Scope of Convention on International Trade in Endangered Species (CITES)

NOTE 1--Regulation 865/2006 amended: EC Commission Regulation 100/2008 (OJ L 31, 5.2.2008, p 3).

NOTE 2--Regulation 865/2006 amended: see NOTE 1.

NOTE 3--SI 1997/1372 further amended: SI 2009/1773. SI 1997/1421 replaced: Control of Trade in Endangered Species (Fees) Regulations 2009, SI 2009/496.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/9. TRADE IN ENDANGERED SPECIES/(1) TRADE IN ENDANGERED SPECIES WITHIN THE EUROPEAN COMMUNITY/961. Introduction of endangered species into the Community.

961. Introduction of endangered species into the Community.

The introduction of specified endangered species into the Community is subject to controls, the stringency of which depends on the classification of the species in question.

Species listed in Annex A may be so introduced only on the completion of the necessary checks, and the prior presentation, at the border customs office at the point of introduction, of an import permit issued by a management authority¹ of the member state of destination². The issue of import permits is conditional on (1) advice given by the competent scientific authority³ (after considering any opinion by the Scientific Review Group)⁴; (2) the provision of certain documentary evidence as to the lawful export of the specimen from where it has come⁵; (3) the conditions of accommodation at the specimen's destination⁶; (4) the management authority being satisfied that the specimen is not to be used for primarily commercial purposes⁷; (5) the management authority being satisfied, following consultation with the competent scientific authority, that there are no other factors relating to the conservation of the species which militate against issuance of the import permit⁸; and (6) in the case of introduction from the sea, the management authority being satisfied that any live specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment⁹.

Species listed in Annex B may be introduced only on the completion of the necessary checks, and the prior presentation, at the border customs office at the point of introduction, of an import permit issued by a management authority of the member state of destination¹⁰. Issue of permits is conditional on (a) advice given by the competent scientific authority (after considering any opinion by the Scientific Review Group)¹¹; (b) the conditions of accommodation at the specimen's destination¹²; and (c) the provision of certain documentary evidence, and the conditions of heads (5) and (6) above being met¹³.

Species listed in Annex C may be introduced only on the completion of the necessary checks, and the prior presentation, at the border customs office at the point of introduction, of an import notification¹⁴, and certain documentation as to the lawfulness with which the specimen has been obtained and exported¹⁵.

Species listed in Annex D may be introduced only on the completion of the necessary checks, and the prior presentation, at the border customs office at the point of introduction, of an import notification¹⁶.

In certain circumstances, the Commission may establish general restrictions, or restrictions relating to certain countries of origin, on the introduction into the Community of certain specimens¹⁷.

Derogation from these rules is provided in respect of specimens in transit through the community, personal and household effects, and loans, donations and exchanges between scientific institutions¹⁸.

1 As to management authorities see PARA 960 text and note 6. As to classification of species see PARA 960 note 1.

2 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1), on the protection of species of wild fauna and flora by regulating trade therein, art 4(1). Another customs office may be designated for the purposes of art 4 in certain circumstances: see art 4(7). As to the validity of certificates and permits throughout the Community see art 11(1); and PARA 960 note 4.

3 As to scientific authorities see PARA 960 text and note 6.

4 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(1)(a). The conditions for the issuance of an import permit as referred to in art 4(1)(a), (d) and the provisions of art 4(2)(a)-(c) do not apply to specimens for which the applicant provides documentary evidence (1) that they had previously been legally introduced into or acquired in the Community and that they are, modified or not, being reintroduced into the Community; or (2) that they are worked specimens that were acquired more than 50 years previously: art 4(5).

When a member state rejects an application for a permit or certificate in a case of significance in respect of the objectives of the Regulation, it must immediately inform the Commission of the rejection and of the reasons for it: art 6(1). The Commission must inform the other member states, who are under a duty to recognise the rejection if duly made: see art 6(2), (4). An applicant for a permit or certificate must disclose the fact of a previous rejection of an application for the same specimens: art 6(3).

As to the fees payable on applications for permits and certificates see the Control of Trade in Endangered Species (Fees) Regulations 1997, SI 1997/1421, regs 3, 4, Schedule.

5 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(1)(b).

6 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(1)(c).

7 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(1)(d). See also note 4.

8 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(1)(e).

9 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(1)(f).

10 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(2). See also note 2.

11 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(2)(a). See also note 4.

12 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(2)(b). See also note 4.

13 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(2)(c). See also note 4.

14 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(3).

15 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(3)(a), (b).

16 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(4).

17 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(6).

18 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 7(2)-(4).

UPDATE

960-965 Trade in endangered species within the European Community

EC Council Regulation 338/97 Annexes: replaced by EC Commission Regulation 318/2008 (OJ L95, 8.4.2008, p 3); EC Commission Regulation 407/2009 (OJ L123, 19.5.2009, p 3).

961 Introduction of endangered species into the Community

NOTE 4--SI 1997/1421 regs 3, 4, Schedule replaced: Control of Trade in Endangered Species (Fees) Regulations 2009, SI 2009/496, regs 3-6, Schedule.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/9. TRADE IN ENDANGERED SPECIES/(1) TRADE IN ENDANGERED SPECIES WITHIN THE EUROPEAN COMMUNITY/962. Export and re-export from the Community.

962. Export and re-export from the Community.

The export or re-export of specified endangered species from the Community is subject to controls, the nature of which depends on the classification of the species in question.

Species listed in Annex A may be exported or re-exported only on the completion of the necessary checks, and the prior presentation, at the customs office at which the export formalities are completed, of an export permit or re-export certificate issued by the management authority¹ of the member state in which the specimens are located². The issue of export permits is conditional on (1) advice given by the competent scientific authority³; (2) the provision of certain documentary evidence as to the lawful obtaining of the specimen from where it has come⁴; (3) (a) the management authority being satisfied that any live specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment⁵; and (b) certain specimens not being used for primarily commercial purposes, or in the certain cases, an import permit having been issued⁶; and (4) the management authority being satisfied, following consultation with the competent scientific authority, that there are no other factors relating to the conservation of the species which militate against issuance of the export permit⁷. A re-export certificate may be issued only when the conditions referred to in heads (3) and (4) have been met, and when the applicant provides documentary evidence that the specimens were lawfully introduced into the Community⁸.

Species listed in Annex B or Annex C may be exported or re-exported only on the completion of the necessary checks, and the prior presentation, at the customs office at which the export formalities are completed, of an export permit or re-export certificate issued by the management authority of the member state in which the specimens are located⁹. An export certificate may be issued only when the conditions referred to in heads (1), (2), (3) (a) and (4) above have been met; a re-export certificate may be issued only when the conditions referred to in heads (3) (a) and (4) above have been met, and when the applicant provides documentary evidence that the specimens were lawfully introduced into the Community¹⁰.

Where an application for a re-export certificate concerns specimens introduced into the Community under an import permit issued by another member state, the management authority must first consult the management authority which issued the permit¹¹.

The competent scientific authority in each member state must monitor the issuance of export permits for specimens of species listed in Annex B and actual exports of such specimens, and advise the competent management authority, in writing, of suitable measures to be taken to limit the issuance of export permits for specimens of any species where appropriate¹².

¹ As to management authorities see PARA 960 text and note 6. As to classification of species see PARA 960 note 1.

² See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1), on the protection of species of wild fauna and flora by regulating trade therein, art 5(1). See also art 6; and PARA 961 note 4. As to the validity of certificates and permits throughout the Community see art 11(1); and PARA 960 note 4.

³ See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 5(2)(a). As to scientific authorities see PARA 960 text and note 6. The conditions for the issuance of an export permit or re-export certificate as referred to in art 5(2)(a), (c)(ii) do not apply to worked specimens that were acquired more than 50 years previously, or dead specimens and parts and derivatives thereof for which the applicant provides documentary evidence that they were legally acquired before these provisions became applicable to them: art 5(6).

As to the fees payable on applications for permits and certificates see the Control of Trade in Endangered Species (Fees) Regulations 1997, SI 1997/1421, regs 3, 4, Schedule.

- 4 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 5(2)(b). As to the issue of certificates see art 10.
- 5 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 5(2)(c)(i).
- 6 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 5(2)(c)(ii). See also note 3.
- 7 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 5(2)(d).
- 8 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 5(3). 'Lawfully' here refers to the requirements of (1) EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1); (2) its predecessor Regulation (ie EC Council Regulation 3626/82); (3) if before 1984, CITES itself (see PARA 960); or (4), if before CITES became applicable, the applicable law. As to the issue of certificates see EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 10.
- 9 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 5(4). As to the issue of certificates see art 10.
- 10 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 5(4).
- 11 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 5(5).
- 12 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 5(7).

UPDATE

960-965 Trade in endangered species within the European Community

EC Council Regulation 338/97 Annexes: replaced by EC Commission Regulation 318/2008 (OJ L95, 8.4.2008, p 3); EC Commission Regulation 407/2009 (OJ L123, 19.5.2009, p 3).

962 Export and re-export from the Community

NOTE 3--SI 1997/1421 regs 3, 4, Schedule replaced: Control of Trade in Endangered Species (Fees) Regulations 2009, SI 2009/496, regs 3-6, Schedule.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/9. TRADE IN ENDANGERED SPECIES/(1) TRADE IN ENDANGERED SPECIES WITHIN THE EUROPEAN COMMUNITY/963. Control of commercial activities.

963. Control of commercial activities.

The purchase, offer to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial gain and sale, keeping for sale, offering for sale or transporting for sale of specimens of the species listed in Annex A is prohibited¹.

Exemption from this prohibition may be granted by issue of a certificate to that effect by a management authority² of the member state in which the specimens are located, on a case-by-case basis where the specimens:

- 181 (1) were acquired before these provisions became applicable to them³;
- 182 (2) are worked specimens that were acquired more than 50 years previously⁴;
- 183 (3) were introduced into the Community in compliance with the provisions of the Regulation and are to be used for purposes which are not detrimental to the survival of the species concerned⁵;
- 184 (4) are captive-born and bred specimens of an animal species or artificially propagated specimens of a plant species or are parts or derivatives of such specimens⁶;
- 185 (5) are required under exceptional circumstances for the advancement of science or for essential biomedical purposes⁷;
- 186 (6) are intended for breeding or propagation purposes from which conservation benefits will accrue to the species concerned⁸;
- 187 (7) are intended for research or education aimed at the preservation or conservation of the species⁹; or
- 188 (8) originate in a member state and were taken from the wild in accordance with the legislation in force in that member state¹⁰.

General derogations from this prohibition may be defined by the Commission¹¹.

This prohibition also applies to specimens of the species listed in Annex B except where it can be proved to the satisfaction of the competent authority of the member state concerned that such specimens were acquired and, if they originated outside the Community, were introduced into it, in accordance with the legislation in force for the conservation of wild fauna and flora¹².

Member states may prohibit the holding of specimens, in particular live animals of the species listed in Annex A¹³.

The competent authorities of the member states may sell any specimen confiscated pursuant to the Regulation, provided that it is not thus returned directly to the person or entity from whom it was confiscated or who was party to the offence; such specimens may then be treated for all purposes as if they had been legally acquired¹⁴.

1 EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1), on the protection of species of wild fauna and flora by regulating trade therein, art 8(1). As to classification of species see PARA 960 note 1.

2 As to the issue of certificates see EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 10. As to the validity of certificates and permits throughout the Community see art 11(1); and PARA 960 note 4. As to management authorities see PARA 960 text and note 6.

3 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(3)(a).

- 4 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(3)(b).
- 5 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(3)(c).
- 6 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(3)(d).
- 7 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(3)(e). See further EC Council Directive 86/609 (OJ L358, 18.12.86, p 1); and for the United Kingdom provisions giving effect thereto, see PARA 875 et seq, especially PARA 883.
- 8 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(3)(f).
- 9 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(3)(g).
- 10 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(3)(h).
- 11 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(4).
- 12 EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(5).
- 13 EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(2).
- 14 EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(6).

UPDATE

960-965 Trade in endangered species within the European Community

EC Council Regulation 338/97 Annexes: replaced by EC Commission Regulation 318/2008 (OJ L95, 8.4.2008, p 3); EC Commission Regulation 407/2009 (OJ L123, 19.5.2009, p 3).

963 Control of commercial activities

NOTE 12--As to the evidence that may be admitted as proof see Case C-344/08 *Criminal proceedings concerning Rubach* [2009] All ER (D) 08 (Sep), ECJ.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/9. TRADE IN ENDANGERED SPECIES/(1) TRADE IN ENDANGERED SPECIES WITHIN THE EUROPEAN COMMUNITY/964. Movement of live specimens.

964. Movement of live specimens.

Any movement within the Community of a live specimen of a species listed in Annex A¹ from the location indicated in the import permit² or in any certificate issued in compliance with the Regulation³ requires prior authorisation from a management authority⁴ of the member state in which the specimen is located; in other cases of movement, the person responsible for moving the specimen must be able, where applicable, to provide proof of the legal origin of the specimen⁵. Such authorisation may be granted only when the competent scientific authority⁶ of such member state or, where the movement is to another member state, the competent scientific authority of the latter, is satisfied as to the intended accommodation for a live specimen at the place of destination⁷. The authorisation must be confirmed by issuance of a certificate⁸; and must, where applicable, be immediately communicated to a management authority of the member state in which the specimen is to be located⁹. No such authorisation is required if a live animal must be moved for the purpose of urgent veterinary treatment and is returned directly to its authorised location¹⁰.

Where a live specimen of a species listed in Annex B is moved within the Community, the holder of the specimen may relinquish it only after ensuring that the intended recipient is adequately informed of the accommodation, equipment and practices required to ensure the specimen will be properly cared for¹¹.

When any live specimens are transported into, from or within the Community or are held during any period of transit or transshipment, they must be prepared, moved and cared for in a manner such as to minimise the risk of injury, damage to health or cruel treatment and, in the case of animals, in conformity with Community legislation on the protection of animals during transport¹².

The Commission may establish restrictions on the holding or movement of live specimens of species in relation to which restrictions on introduction into the Community have been established¹³.

1 As to classification of species see PARA 960 note 1.

2 As to permits see PARA 961.

3 Ie EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1), on the protection of species of wild fauna and flora by regulating trade therein.

4 As to management authorities see PARA 960 text and note 6.

5 EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 9(1).

6 As to scientific authorities see PARA 960 text and note 6.

7 EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 9(2)(a).

8 EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 9(2)(b). As to the issue of certificates see art 10. As to the validity of certificates and permits throughout the Community see art 11(1); and PARA 960 note 4.

9 EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 9(2)(c).

10 EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 9(3).

11 EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 9(4).

12 EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 9(5). See further PARA 869.

13 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 9(6). As to restrictions on introduction into the Community see art 4(6); and PARA 961 text and note 17.

UPDATE

960-965 Trade in endangered species within the European Community

EC Council Regulation 338/97 Annexes: replaced by EC Commission Regulation 318/2008 (OJ L95, 8.4.2008, p 3); EC Commission Regulation 407/2009 (OJ L123, 19.5.2009, p 3).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/9. TRADE IN ENDANGERED SPECIES/(1) TRADE IN ENDANGERED SPECIES WITHIN THE EUROPEAN COMMUNITY/965. Enforcement in the United Kingdom.

965. Enforcement in the United Kingdom.

A person who, for the purpose of obtaining, whether for himself or another, the issue of a permit or certificate¹:

- 189 (1) knowingly or recklessly makes a statement or representation which is false in a material particular²; or
- 190 (2) knowingly or recklessly furnishes a document or information which is false in a material particular³; or
- 191 (3) for any purpose in connection with the EC legislation⁴, knowingly or recklessly uses or furnishes a false, falsified or invalid permit or certificate or one altered without authorisation⁵,

is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months, or to both or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both⁶.

A person who knowingly or recklessly makes an import notification⁷ which is false in a material particular is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale, or to a term of imprisonment not exceeding three months, or to both; or on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both⁸.

A permit or certificate, or an import notification, in relation to which such an offence has been committed is void⁹.

A person who:

- 192 (a) knowingly falsifies or alters any permit or certificate¹⁰;
- 193 (b) knowingly uses a permit, certificate or import notification for any specimen other than that for which it was issued¹¹;
- 194 (c) knowingly uses a specimen of a species listed in Annex A¹² otherwise than in accordance with the authorisation given at the time of issue of the import permit or subsequently¹³;
- 195 (d) knowingly contravenes any condition or requirement of a permit or certificate issued in accordance with the EC legislation¹⁴;
- 196 (e) without reasonable excuse (and contrary to the EC provisions relating to the movement of live animals¹⁵) causes or permits a specimen listed in Annex A to be transferred from an address which was specified in a permit or certificate, or keeps such specimen otherwise than at that address, without prior written authorisation from the Secretary of State¹⁶;
- 197 (f) purchases, offers to purchase, acquires for commercial purposes, displays to the public for commercial purposes, uses for commercial gain, sells, keeps for sale, offers for sale or transports for sale any specimen of a species listed in Annex A¹⁷;
- 198 (g) purchases, offers to purchase, acquires for commercial purposes, sells, keeps for sale, offers for sale or transports for sale any specimen of a species listed in Annex B which has been imported or acquired unlawfully¹⁸; or
- 199 (h) pretends, with intent to deceive, to be an authorised person¹⁹,

is guilty of an offence and liable on summary conviction, to a fine not exceeding level 5 on the standard scale, or to a term of imprisonment not exceeding six months, or to both, or on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both²⁰.

Proof of lawful import or export may be required by a Customs and Excise Officer, who has power to detain a specimen until such proof is furnished²¹.

A justice of the peace may issue a warrant authorising a constable to enter and search premises if there are reasonable grounds for believing that there is any unlawfully imported or acquired specimen on those premises; or that an offence as described above has been or is being committed and that evidence of the offence may be found on any premises, and that (i) admission to the premises has been refused; or (ii) refusal is apprehended; or (iii) the case is one of urgency; or (iv) an application for admission to the premises would defeat the object of the entry²². A constable on any premises by virtue of such a warrant may, in order to determine the identity or ancestry of any specimen, require the taking from any specimen of a sample of blood or tissue provided that the sample is taken by a registered veterinary surgeon, and the taking of such a sample will not cause lasting harm to the specimen²³.

An authorised person²⁴ may, at any reasonable time and (if required to do so) upon producing evidence that he is so authorised, enter and inspect any premises where he has reasonable cause to believe a specimen is being kept, for the purpose of (A) ascertaining whether the premises are being used for purchase, offering to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial gain, sale, keeping for sale, offering for sale or transporting for sale contrary the EC legislation; or (B) verifying information supplied by a person for the purpose of obtaining a permit or certificate; or (C) ascertaining whether any live specimen is being kept on premises at the address specified in the import permit issued for that specimen as that at which the specimen is to be kept; or (D) ascertaining whether any condition of a permit or certificate has been or is being observed²⁵. Any person who intentionally obstructs an authorised person acting in accordance with these powers is guilty of an offence and liable for every such obstruction, on summary conviction, to a fine not exceeding level 3 on the standard scale²⁶.

The court by which any person is convicted of an offence under these provisions must order the forfeiture of any specimen or other thing in respect of which the offence was committed; and may order the forfeiture of any vehicle, equipment or other thing which was used to commit the offence²⁷.

1 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 3(1). As to the permits and certificates referred to see PARA 961 et seq.

2 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 3(1)(a).

3 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 3(1)(b).

4 I.e. EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1), on the protection of species of wild fauna and flora by regulating trade therein (see PARA 960 et seq), or EC Council Regulation 865/2006 (OJ L166 19.6.2006, p 1) (see PARA 960 note 1).

5 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 3(1)(c).

6 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 3(1). As to the standard scale see PARA 738 note 1. As to offences by corporations see reg 12.

7 As to import notifications see PARA 961.

8 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 3(2).

9 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 3(3), which is expressed to be without prejudice to EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 11(2)(a); see PARA 960 note 4.

10 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 4(1).

11 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 4(2).

12 As to classification of species see PARA 960 note 1.

13 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 4(3).

14 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 6.

15 Ie EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 9; see PARA 964.

16 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 7(1). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

17 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 8(1) (reg 8 substituted by SI 2005/1674). This does not apply to anything done under, and in accordance with the terms of, any certificate or general derogation granted pursuant to EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8 (see PARA 963): Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 8(3) (as so substituted). Nor is a person guilty of this offence if he proves that at the time the alleged offence was committed he had no reason to believe that the specimen was a specimen of a species listed in Annex A: reg 8(4) (as so substituted). A person guilty of an offence under reg 8(1) or (2) (see text and note 18) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale or to a term of imprisonment not exceeding six months, or to both, and, on conviction on indictment, to a term of imprisonment not exceeding five years or to a fine, or to both: reg 8(8) (as so substituted). See *R v Humphrey* [2003] EWCA Crim 1915, [2004] 1 Cr App Rep (S) 252, [2003] All ER (D) 288 (Jun) (trial judge had rightly treated the defendant's offences with the utmost seriousness, in circumstances where they had been aggravated by the extreme cruelty in the treatment of some of the birds; however, the total length of his sentence was longer than commensurate with the seriousness of offence and was reduced on appeal).

18 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 8(2) (as substituted: see note 17). As to the penalty see note 17. A person is not guilty of this offence if he proves that at the time the alleged offence was committed he had no reason to believe that the specimen was a specimen of a species listed in Annex B: reg 8(4) (as so substituted). Nor is a person guilty of this offence if he proves that at the time when the specimen first came into his possession he made such inquiries (if any) as in the circumstances were reasonable in order to ascertain whether it was imported or acquired unlawfully; and that at the time the alleged offence was committed, he had no reason to believe that the specimen was imported or acquired unlawfully: reg 8(5) (as so substituted). A person is taken to have made such inquiries if he produces to the court a statement which was furnished by the person from whom he obtained possession of the specimen (the 'supplier'), which was signed by the supplier or by a person authorised by him, stating that the supplier made inquiries at the time the specimen came into his possession in order to ascertain whether it was a specimen which had been imported or acquired unlawfully; and the supplier had no reason to believe at the time he relinquished possession of the specimen to the accused that the article was at that time a specimen which had been imported or acquired unlawfully: reg 8(6) (as so substituted). It is an offence for a person to furnish such a statement which he knows to be false in a material particular, or recklessly furnish a certificate which is false in a material particular: reg 8(7) (as so substituted). A person guilty of an offence under reg 8(7) is liable on summary conviction, to a fine not exceeding level 5 on the standard scale, or to a term of imprisonment not exceeding six months, or to both, and on conviction on indictment, to a term of imprisonment not exceeding two years or to a fine, or to both: reg 8(9) (as so substituted).

19 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 9(7).

20 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, regs 4, 6, 7(2), 8(8), 9(7).

21 See the Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 5.

22 See the Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 9(1), (2). As to the constable's power of seizure see reg 10.

23 See the Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 9(3). As to registered veterinary surgeons see PARA 1133.

24 le a person authorised for the purpose by the Secretary of State: Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 2.

25 See the Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 9(4). Such a person also has the power to require the taking of samples of blood or tissue provided that the sample is taken by a registered veterinary surgeon, and the taking of such a sample will not cause lasting harm to the specimen: reg 9(5).

26 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 9(6).

27 See the Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 11.

UPDATE

960-965 Trade in endangered species within the European Community

EC Council Regulation 338/97 Annexes: replaced by EC Commission Regulation 318/2008 (OJ L95, 8.4.2008, p 3); EC Commission Regulation 407/2009 (OJ L123, 19.5.2009, p 3).

965 Enforcement in the United Kingdom

TEXT AND NOTE 18--For the purposes of SI 1997/1372 reg 8 there is a presumption in favour of Annex A in cases where different species, sub-species or geographical populations of species are split between Annex A and Annex B: SI 1997/1372 reg 8A (added by SI 2009/1773).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/9. TRADE IN ENDANGERED SPECIES/(2) PROHIBITIONS UNDER THE ENDANGERED SPECIES (IMPORT AND EXPORT) ACT 1976/966. Restrictions on import and export of endangered species.

(2) PROHIBITIONS UNDER THE

966. Restrictions on import and export of endangered species.

Provision is made by the Endangered Species (Import and Export) Act 1976 for the prohibition of the exportation and importation of animals, whether alive or dead¹, which are for the time being considered to be endangered species², and the importation and exportation of products derived from certain species for the time being specified³, except when carried out under a licence⁴ issued by the Secretary of State and in accordance with its terms⁵. At the date at which this volume states the law, no species are specified under these provisions, the trade in such species now being governed by European law⁶.

Provision for the enforcement of this prohibition, and for the control of such importation as is licensed, has been made, and several offences have been created⁷. Where such an offence is committed by a body corporate, but it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate (or any person who was purporting to act in any such capacity) he, as well as the body corporate, is guilty of the offence and is liable to be proceeded against and punished accordingly⁸.

The provisions of the Endangered Species (Import and Export) Act 1976 may be extended to British possessions⁹.

1 Reference to a dead animal includes reference to the body of an animal which is frozen, dried or preserved by chemicals, or to a body which, although not complete (having been, eg, stuffed), is substantially complete and externally substantially resembles a complete body: Endangered Species (Import and Export) Act 1976 s 12(2).

2 The Endangered Species (Import and Export) Act 1976 s 1(1)(a) prohibits the importation and exportation of animals to which Sch 1 Pt I for the time being applies. At the date at which this volume states the law, that Schedule does not apply to any kind of animal: Sch 1 (substituted by SI 1996/2684).

The Secretary of State may, after consulting any scientific authority or authorities (as to which see PARA 967 note 2), make such modifications as he considers necessary or desirable for certain specified purposes: see the Endangered Species (Import and Export) Act 1976 s 3 (amended by the Wildlife and Countryside Act 1981 s 15, Sch 10 para 4). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

The GB conservation bodies are empowered to assist in the enforcement of the Endangered Species (Import and Export) Act 1976: Wildlife and Countryside Act 1981 s 15(2) (amended by the Environmental Protection Act 1990 s 132, Sch 9 para 11; and the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 para 71). As to the GB conservation bodies (ie Natural England and the Countryside Council for Wales: Wildlife and Countryside Act 1981 s 27(3A) (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 76)) see **OPEN SPACES AND COUNTRYSIDE**.

3 The Endangered Species (Import and Export) Act 1976 s 1(1)(c) prohibits the importation and exportation of items to which Sch 3 for the time being applies. At the date at which this volume states the law, that Schedule does not apply to any item: Sch 3 (substituted by SI 1996/2684).

4 See PARA 967.

5 Endangered Species (Import and Export) Act 1976 s 1(1), (2). Any person authorised in writing by the Secretary of State may enter premises where animals of any of the kinds to which Sch 1 applies are kept, in order to ascertain whether any of the animals kept there have been imported unlawfully, and any person who wilfully obstructs such a person is liable on summary conviction to a maximum fine of level 3 on the standard

scale: s 1(10), (11) (s 1(11) added by the Wildlife and Countryside Act 1981 Sch 10 Pt I para 3; and amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 738 note 1.

6 See PARA 960 et seq.

7 See PARAS 967-971.

8 Endangered Species (Import and Export) Act 1976 s 8.

9 See the Endangered Species (Import and Export) Act 1976 s 9. At the date at which this volume states the law, no order had been made under this provision.

UPDATE

966-967 Restrictions on import and export of endangered species, Licences for import or export

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/9. TRADE IN ENDANGERED SPECIES/(2) PROHIBITIONS UNDER THE ENDANGERED SPECIES (IMPORT AND EXPORT) ACT 1976/967. Licences for import or export.

967. Licences for import or export.

Applications for a licence should be addressed to the Secretary of State, who must¹ submit any such application to the scientific authority² he considers is the best able to advise him as to whether a licence should be issued, and as to its terms³. Having allowed the authority a reasonable time in which to advise him, he may then issue or decline to issue a licence⁴. Such a licence may be, to any degree, general or specific, may be issued to all persons, to persons of a class or to a particular person, may be subject to compliance with any specified conditions, and may be modified or revoked at any time by the Secretary of State⁵. Any person who for the purposes of obtaining the issue of a licence, whether for himself or for another, makes a statement or representation, or furnishes a document or information, which he knows to be false in a material particular, or who recklessly⁶ makes a statement or representation or furnishes a document or information which is false in a material particular, commits an offence⁷; furthermore, when such an offence is committed the relevant licence is void⁸.

¹ Unless the scientific authority concerned has already advised the Secretary of State as to whether licences should be issued in pursuance of applications of that description and, if so, their terms: Endangered Species (Import and Export) Act 1976 s 1(3A) (s 1(3A), (3B), (9), (10) added by the Wildlife and Countryside Act 1981 s 15(1), Sch 10 Pt I para 1(1)). As to the functioning of the Endangered Species (Import and Export) Act 1976 see PARA 966. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

Where the Secretary of State is satisfied that the issue of a licence authorising the importation or exportation of any item which (1) is part of or derives from or is made wholly or partly from an animal of any of the kinds to which Sch 1 for the time being applies; but (2) is not an item to which Sch 3 for the time being applies, would facilitate the importation or exportation of that item, he may, if he considers it expedient to do so, issue such a licence: s 1(3B) (as so added). At the date at which this volume states the law, no such animals are specified: see PARA 966.

² Is a body whose duty it is to advise the Secretary of State on any question which he may refer to it, and on any question on which it considers it should offer its advice, in connection with the administration of the Act and generally in connection with the import and export of animals of kinds which appear to the Secretary of State or to the body to be, or to be likely to become, endangered as a result of international trade, and items derived wholly or partly from such animals: Endangered Species (Import and Export) Act 1976 s 2(4). The Secretary of State must establish at least one such body, consisting of such members as he may from time to time appoint, or assign the above-mentioned duties to at least one other body: s 2(1), (2). As to the appointment of members see s 2(6). The scientific authority may publish reports on the performance of its duties: s 1(5).

³ Endangered Species (Import and Export) Act 1976 s 1(3).

⁴ Endangered Species (Import and Export) Act 1976 s 1(2), (3). The Secretary of State may charge such sum as is for the time being prescribed by his order for the issue of a licence: s 1(5) (s 1(5), (7) amended by the Wildlife and Countryside Act 1981 Sch 10 para 1(2)).

⁵ Endangered Species (Import and Export) Act 1976 s 1(4) (amended by the Wildlife and Countryside Act 1981 Sch 10 Pt I para 1(3)).

⁶ See PARA 740 note 8.

⁷ Endangered Species (Import and Export) Act 1976 s 1(6) (amended by the Wildlife and Countryside Act 1981 Sch 10 Pt I para 1(3)); the maximum penalty on summary conviction is a fine of the prescribed sum, or on conviction on indictment two years' imprisonment, a fine, or both: Endangered Species (Import and Export) Act 1976 s 1(6) (amended by virtue of the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see PARA 739 note 3.

⁸ Endangered Species (Import and Export) Act 1976 s 1(7) (as amended: see note 4).

UPDATE

966-967 Restrictions on import and export of endangered species, Licences for import or export

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/9. TRADE IN ENDANGERED SPECIES/(2) PROHIBITIONS UNDER THE ENDANGERED SPECIES (IMPORT AND EXPORT) ACT 1976/968. Power to restrict places of importation.

968. Power to restrict places of importation.

If it appears to the Secretary of State desirable to do so for the purpose of assisting the discovery of the unlawful¹ importation of any live animal, he may make an order, relating to any kind of animal². Such an order may provide that (subject to such exceptions as may be specified in the order) it is prohibited to import any live animal of a specified kind, or to import any such animal except at a specified port, airport or place³.

¹ See under the Endangered Species (Import and Export) Act 1976 s 1; see PARA 966. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

² Endangered Species (Import and Export) Act 1976 s 5(1).

³ Endangered Species (Import and Export) Act 1976 s 5(2). The prohibition or restriction does not apply to any animal separately authorised by the Secretary of State, which is imported in accordance with the authorisation: s 5(3). 'Airport' means an aerodrome for the time being designated as a customs and excise airport as mentioned in the Customs and Excise Management Act 1979 s 21(7) (see **AIR LAW** vol 2 (2008) PARA 310); Endangered Species (Import and Export) Act 1976 s 5(4). 'Port' means any area for the time being appointed and named under the Customs and Excise Act 1979 s 19(1) as a port for the purposes of revenue and customs: Endangered Species (Import and Export) Act 1976 s 5(4) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/9. TRADE IN ENDANGERED SPECIES/(2) PROHIBITIONS UNDER THE ENDANGERED SPECIES (IMPORT AND EXPORT) ACT 1976/969. Power to restrict movement of animals after importation.

969. Power to restrict movement of animals after importation.

Where a licence¹ has been issued or applied for and, after consulting one or more of the scientific authorities², the Secretary of State considers that it is desirable to do so, he may give a direction in relation to the animal in respect of which the licence was applied for³. If he does so, then for as long as the direction is not revoked by the Secretary of State the animal must be taken to and kept at specified premises⁴ immediately after the relevant event⁵ occurs, until such time as the Secretary of State requires or permits the animal to be moved to other specified premises or until he revokes the direction⁶. When such a direction is in force, at any time after the relevant event a person commits an offence if he knows (or ought to know) of the direction and he knowingly takes the animal, or knowingly permits it to be taken, to premises which he knows (or ought to know) are not at the time of the taking the specified premises; or if he knowingly moves the animal, or knowingly permits it to be moved, when the move is made from premises which he knows (or ought to know) are specified premises, and he knows (or ought to know) that the removal is made without the Secretary of State's requirement or permission⁷; or if he knowingly keeps the animal at premises which he occupies and which he knows (or ought to know) are not specified premises⁸.

1 I.e. a licence under the Endangered Species (Import and Export) Act 1976 s 1(2); see PARA 967.

2 See PARA 967 note 2.

3 Endangered Species (Import and Export) Act 1976 s 6(1). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

4 'Specified premises' means such premises as are for the time being, and in whatever manner, specified in relation to the animal by the Secretary of State: Endangered Species (Import and Export) Act 1976 s 6(5). Before specifying any premises he must consult one or more of the scientific authorities (s 7(1)), and he must not specify any premises unless in his opinion the animal in question may suitably be kept there (s 7(2)). Any person duly authorised by the Secretary of State may enter premises which are for the time being specified in order to enable the Secretary of State to decide whether the premises remain such that, in his opinion, the animal may suitably be kept there, and/or to ascertain whether the animal is being kept there: s 7(3). Anyone who wilfully obstructs such a person is liable on summary conviction to a maximum fine of level 5 on the standard scale: s 7(4) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 738 note 1.

5 'Relevant event' means either the completion by the animal of a period of quarantine or other detention connected with its importation, or the animal's departure from any premises connected with its importation, whichever occurs later: Endangered Species (Import and Export) Act 1976 s 6(4).

6 Endangered Species (Import and Export) Act 1976 s 6(2). Before revoking a direction the Secretary of State must consult one or more of the scientific authorities (as to which see PARA 967 note 2): s 7(1).

7 I.e. such a requirement or permission as is referred to in the text to note 6: Endangered Species (Import and Export) Act 1976 s 6(3)(b)(ii).

8 Endangered Species (Import and Export) Act 1976 s 6(3). The maximum penalty on summary conviction is a fine of level 5 on the standard scale: s 6(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). Proceedings for the offence may be brought within six months of evidence sufficient (in a prosecutor's opinion) to warrant proceedings coming to his knowledge; however, no proceedings may be brought more than three years after the commission of the offence: Endangered Species (Import and Export) Act 1976 s 6(6). A certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to his knowledge is conclusive evidence of the fact; and a certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved: s 6(7).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/9. TRADE IN ENDANGERED SPECIES/(2) PROHIBITIONS UNDER THE ENDANGERED SPECIES (IMPORT AND EXPORT) ACT 1976/970. Powers of Her Majesty's Commissioners for Revenue and Customs.

970. Powers of Her Majesty's Commissioners for Revenue and Customs.

Where any live or dead animal is in the process of being imported or exported, a person commissioned or authorised by Her Majesty's Commissioners for Revenue and Customs² may require proof that the animal's import or export is not unlawful¹, on pain of forfeiture of the animal³.

¹ See under the Endangered Species (Import and Export) Act 1976 s 1: see PARA 966.

² As to Her Majesty's Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) para 900 et seq.

³ Endangered Species (Import and Export) Act 1976 s 1(8) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). Where, in the case of a live animal which is condemned or deemed to be condemned as forfeited, the Commissioners for Revenue and Customs incur any expenses in connection with or with a view to its return to the wild or its being kept at suitable premises, those expenses may be recovered as a debt due to the Crown from the importer or intending exporter of the animal, or from any person possessing or having control of it at the time of its seizure: Endangered Species (Import and Export) Act 1976 s 1(9) (added by the Wildlife Countryside Act 1981 s 15(1), Sch 10 Pt I para 2; and amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

UPDATE

970-972 Powers of Her Majesty's Commissioners for Revenue and Customs ... Restrictions on import and export of other animals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/9. TRADE IN ENDANGERED SPECIES/(2) PROHIBITIONS UNDER THE ENDANGERED SPECIES (IMPORT AND EXPORT) ACT 1976/971. Sale, etc, of endangered species or things made from them.

971. Sale, etc, of endangered species or things made from them.

Any person who sells¹, offers or exposes for sale, has in his possession or transports for the purpose of sale, or displays to the public², anything unlawfully³ imported or anything which is made wholly or partly from such thing and which, at the time of the sale or other dealing, constitutes an item the sale of which is restricted, is guilty of an offence⁴. Any person who deals in a similar way with an animal (alive or dead) the sale of which is restricted⁵, or an egg or other immature stage of such an animal, or any part of or anything which derives from, or is made wholly or partly from, such an animal, egg or other immature stage, also commits an offence⁶. These offences do not, however, apply to anything done under, and in accordance with the terms of, a licence issued by the Secretary of State⁷. Nor is a person guilty of either offence if he proves that at the time when the restricted article⁸ first came into his possession he made such inquiries (if any) as were reasonable in the circumstances⁹ in order to ascertain whether it was a restricted article, and that at the time the alleged offence was committed he had no reason to believe it was a restricted article¹⁰. A person guilty of either offence is liable on summary conviction to a maximum fine of the prescribed sum or on conviction on indictment to imprisonment for a term not exceeding two years, a fine, or both¹¹.

1 Reference to sale includes references to hire, barter and exchange: Endangered Species (Import and Export) Act 1976 s 4(6) (s 4(1), (2), (5), (6) amended by the Wildlife and Countryside Act 1981 s 15(1), Sch 10 para 5).

2 This includes display to the public generally or to any section of it, and (in either case) whether in return for money or otherwise: Endangered Species (Import and Export) Act 1976 s 4(7).

3 Ie in contravention of the Endangered Species (Import and Export) Act 1976 s 1; see PARA 966.

4 Endangered Species (Import and Export) Act 1976 s 4(1) (as amended: see note 1).

5 Ie an animal listed in the Endangered Species (Import and Export) Act 1976 Sch 4 (added by the Wildlife and Countryside Act 1981 Sch 10 Pt I para 5(6), Pt II; substituted by SI 1996/2684). The Schedule covers a wide range of mammals, birds, reptiles and fish, and reference should be made to the full text of the Act when considering specific species.

6 Endangered Species (Import and Export) Act 1976 s 4(1A) (s 4(1A)-(1C) added by the Wildlife and Countryside Act 1981 Sch 10 Pt I para 5). This offence is not committed if the thing dealt with is covered by the Endangered Species (Import and Export) Act 1976 s 4(1) (ie the offence described at text to note 2), nor if the thing was imported, or is a part of or derives from or is made wholly or partly from anything which has been imported, before 30 October 1981: s 4(1A) (as so added).

7 Endangered Species (Import and Export) Act 1976 s 4(1B) (as added: see note 6). The Secretary of State need not consult any scientific authority before granting or refusing such a licence, but in other respects the criteria for such a licence are as described in PARA 967: s 4(1B). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

8 Ie any thing covered by the above-mentioned offences: Endangered Species (Import and Export) Act 1976 s 4(1C) (as added: see note 6).

9 Without prejudice to the generality of this provision, a person is to be taken to have made the necessary inquiries if he produces to the court a certificate furnished by the supplier of the restricted article, which is signed by the supplier (or a person authorised by him) and which states that the supplier made inquiries at the time the restricted article came into his possession in order to ascertain whether it was a restricted article, and that he had no reason to believe at the time he relinquished possession of the restricted article to the accused that the article was at that time a restricted article: Endangered Species (Import and Export) Act 1976 s 4(3). Anyone who furnishes for the above-mentioned purposes a certificate which he knows to be false in a material

particular, or who recklessly furnishes for those purposes a certificate which is false in a material particular, commits an offence: s 4(4). The penalty for this offence is the same as is described in the text to note 11.

10 Endangered Species (Import and Export) Act 1976 s 4(2) (as amended: see note 1).

11 Endangered Species (Import and Export) Act 1976 s 4(5) (amended by virtue of the Magistrates' Courts Act 1980 s 32(1)). As to the prescribed sum see PARA 739 note 3.

UPDATE

970-972 Powers of Her Majesty's Commissioners for Revenue and Customs ... Restrictions on import and export of other animals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/9. TRADE IN ENDANGERED SPECIES/(3) OTHER RESTRICTIONS ON IMPORT AND EXPORT/972. Restrictions on import and export of other animals.

(3) OTHER RESTRICTIONS ON IMPORT AND EXPORT

972. Restrictions on import and export of other animals.

In addition to the controls over the import of rare¹ and destructive² animals, there are various other statutory restrictions on both the import and export of other animals, both domestic and wild, whose details fall to be considered elsewhere in this work but to which brief reference may usefully be made here.

Thus there are comprehensive regulations made under the Animal Health Act 1981 as to the import and export of animals with the purpose of controlling, eradicating and preventing disease³. 'Animals' under that Act means cattle, sheep and goats and all other ruminating animals and swine⁴, but the Secretary of State and the Welsh Ministers⁵ have power to extend the definition to other creatures⁶. Poultry are also dealt with under the Act⁷.

The import of dogs, cats and other mammals is subject to special provisions⁸.

1 See PARA 966 et seq.

2 See PARA 1031.

3 See PARAS 1081-1088.

4 Animal Health Act 1981 s 87(1).

5 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

6 Animal Health Act 1981 s 87(2), (3); see PARA 1041.

7 Animal Health Act 1981 s 87(4), (5); see PARA 1109.

8 See PARA 1054 et seq.

UPDATE

970-972 Powers of Her Majesty's Commissioners for Revenue and Customs ... Restrictions on import and export of other animals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(1) PROTECTION OF DEER/(i) In general/973. Meaning of 'deer'.

10. PROTECTION AND KEEPING OF WILD ANIMALS

(1) PROTECTION OF DEER

(i) In general

973. Meaning of 'deer'.

For the purposes of the Deer Act 1991 'deer' means deer of any species and includes the carcase of any deer or any part thereof¹. Different close seasons are set by the Act for different species of deer². With this exception there is no statutory definition of deer, and in those Acts which mention deer the term therefore applies to every species of deer of either sex and of all ages³.

¹ Deer Act 1991 s 16. 'Species' includes any hybrid of different species of deer: s 16 (definition added by SI 2007/2183).

² See the Deer Act 1991 s 2, Sch 1; and PARA 976.

³ See *R v Strange* (1843) 1 Cox CC 58.

UPDATE

973-990 Meaning of 'deer' ... Permits for entering and remaining in Antarctica

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(1) PROTECTION OF DEER/(i) In general/974. Tame deer.

974. Tame deer.

Tame deer are personal property, and accordingly can be the subject of theft¹.

¹ Theft Act 1968 ss 4(1), (4); and see PARA 736.

UPDATE

973-990 Meaning of 'deer' ... Permits for entering and remaining in Antarctica

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(1) PROTECTION OF DEER/(i) In general/975. Wild deer.

975. Wild deer.

Although wild deer are to be regarded as property, they cannot be the subject of theft¹, but they are otherwise protected by statute².

1 Theft Act 1968 s 4(4); and see PARA 737.

2 Ie by the Deer Act 1991: see PARA 977.

UPDATE

973-990 Meaning of 'deer' ... Permits for entering and remaining in Antarctica

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(1) PROTECTION OF DEER/(i) In general/976. Close seasons and times for deer.

976. Close seasons and times for deer.

It is an offence¹ to take² or intentionally kill³ deer of any species and description specified in the Deer Act 1991 during the close season thereby prescribed⁴. This offence, however, is not committed when (1) farmed deer are killed during the close season by their keeper or his servants or agents⁵; or (2) one of a specified class of persons⁶ takes or kills any deer by shooting it, or in an attempt to do so, injures any deer, on any cultivated land, pasture or enclosed woodland⁷.

It is also an offence to take or intentionally kill any deer⁸ between the end of the first hour after sunset and the beginning of the last hour before sunrise⁹.

Neither of the above offences is committed if (a) the act is done to prevent the suffering of an injured or diseased deer¹⁰; or (b) the person taking or killing a deer reasonably believes that the deer has been deprived in any way (other than by an unlawful taking or killing by that person) of a female deer on which it was dependent or is about to be deprived, by death from disease or a lawful taking or killing, of a female deer on which it is dependent¹¹; or (c) the act is done in pursuance of a requirement¹² relating to the prevention of damage by pests¹³. There are further exceptions in the case of taking deer at any time where the act is done under a licence granted by Natural England, the Countryside Council for Wales or the Welsh Ministers¹⁴.

1 For powers of search and seizure by a constable see PARA 982; for penalties see PARA 983.

2 'To take' means to catch: *R v Glover* (1814) Russ & Ry 269, CCR; *Watkins v Price* (1877) 42 JP 21, DC.

3 The killing must be deliberate and intentional, not by accident or inadvertence, and the mind of the person who does the act must go with it: see *R v Senior* [1899] 1 QB 283, CCR; *R v Walker* (1934) 24 Cr App Rep 117, CCA; and *Eaton v Cobb* [1950] 1 All ER 1016. See also PARA 863 note 13.

4 Deer Act 1991 s 2(1). The close seasons, species and descriptions specified by s 2(1), (2), Sch 1 (Sch 1 substituted by SI 2007/2183) are: 1 April to 31 October inclusive for Chinese water deer (*Hydropotes inermis*) buck and doe, fallow deer (*Dama dama*) doe, red deer (*Cervus elaphus*) hinds, red and sika deer hybrid hinds, roe deer (*Capreolus capreolus*) doe, and sika deer (*Cervus nippon*) hinds; 1 May to 31 July inclusive for fallow deer buck, red deer stags, red and sika deer hybrid stags, and sika deer stags; and 1 November to 31 March inclusive for roe deer buck. For the purposes of the Regulatory Reform Act 2001 s 4 the table of close seasons is designated as a subordinate provision: Regulatory Reform (Deer) (England and Wales) Order 2007, SI 2007/2183, art 6(1). For the purposes of the Regulatory Reform Act 2001 s 4 (repealed by the Legislative and Regulatory Reform Act 2006 s 30(1), Schedule; but see savings in s 30(3), (4)) the power to make a subordinate provisions order in relation to that table is exercisable in relation to Wales by the Welsh Ministers: Regulatory Reform (Deer) (England and Wales) Order 2007, SI 2007/2183, art 6(2). Before making a subordinate provisions order in relation to the table of close seasons, the Secretary of State or the Welsh Ministers (as the case may be) must consult those organisations who appear to him or them (respectively) to represent persons likely to be interested in or who would be affected by the order: art 6(3). Such an order must be made by statutory instrument (Regulatory Reform Act 2001 s 4(1) (repealed)), a draft of which as respects England must have been laid before and approved by a resolution of each House of Parliament (s 4(2) (repealed)). As to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

5 Deer Act 1991 s 2(3). The deer must be kept by a person by way of business, on land surrounded by a deer-proof barrier, for the production of meat, other foodstuffs, skins or other by-products, or as breeding stock: s 2(3)(a). The deer must be conspicuously marked in such a way as to identify them as kept by that person: s 2(3)(b).

6 The specified persons are: the occupier of the land on which the action is taken; any member of his household normally resident on the land, or any person in his ordinary service on the land, acting with his written authority; or any person having the right to take or kill deer on the land, or any person acting with the written authority of a person having that right: Deer Act 1991 s 7(4). Such a person may not rely on this defence as respects anything done in relation to any deer on any land unless he shows that he had reasonable grounds for believing that deer of the same species were causing, or had caused, damage to crops, vegetables, fruit, growing timber or any other property on the land; that it was likely further damage would be so caused and any such damage was likely to be serious; and that his action was necessary for the purpose of preventing any such damage: s 7(3).

7 Deer Act 1991 s 7(1).

8 'Deer' here means any species of deer whatever: see PARA 973.

9 Deer Act 1991 s 3. Cf PARA 791 note 4.

10 Deer Act 1991 s 6(2).

11 Deer Act 1991 s 6(2A) (added by SI 2007/2183).

12 It is a requirement of the Secretary of State or the Welsh Ministers under the Agriculture Act 1947 s 98; see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1021.

13 Deer Act 1991 s 6(1).

14 See the Deer Act 1991 s 8 (amended by the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 para 128; and SI 2007/2183). A licence granted under this provision by Natural England or the Countryside Council for Wales may exempt the grantee and any person acting with his written authority from the provisions of the Deer Act 1991 ss 2-4 in respect of certain acts done for the purpose of removing deer to another area or taking them alive for scientific or educational purposes: s 8(1), (2) (s 8(1) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 128). The acts referred to are (1) using any net, trap, stupefying drug or muscle-relaxing agent of a type authorised by the licence; and (2) using any missile carrying or containing such stupefying drug or muscle-relaxing agent and discharging any such missile by any means authorised by the licence: Deer Act 1991 s 8(3).

A licence may be granted to any person by Natural England, in relation to any land in England, or the Welsh Ministers, in relation to any land in Wales, exempting that person from s 2 in relation to any species and description of deer for the purpose of preserving public health or public safety, or conserving the natural heritage: s 8(3A), (3B) (s 8(3A)-(3H) added by SI 2007/2183). Before granting such a licence in relation to any land the licensor must be satisfied that (a) in the case of a licence required for the purpose of preserving public health or public safety, there is a serious risk of deer of the species and description to which the application relates putting public health or public safety at risk; (b) in the case of a licence required for the purpose of conserving the natural heritage, there is a serious risk of deer of the species and description to which the application relates causing deterioration of the natural heritage; (c) to achieve the purpose in question there is no satisfactory alternative to taking and killing the deer of the species and description to which the application relates during the prescribed close season; (d) the applicant has a right of entry to the land for the purpose of taking or killing deer under the licence; and (e) if the licence is to relate to red, roe or fallow deer, the taking or killing to be authorised by the licence will not compromise the ability of that species to maintain the population of deer in question on a long-term basis within its natural range in the numbers which exist after the taking or killing has taken place: Deer Act 1991 s 8(3C) (as so added).

A licence may be granted to any person by Natural England in relation to any land in England or the Welsh Ministers, in relation to any land in Wales, exempting that person from s 3 in relation to any species and description of deer: s 8(3D) (as so added). Such a licence may be granted for the purpose of preserving public health or public safety, conserving the natural heritage, or preventing serious damage to property: s 8(3E) (as so added). Before granting such a licence in relation to any land the licensor must be satisfied that (i) in the case of a licence required for the purpose of preserving public health or public safety, there is a serious risk of deer of the species and description to which the application relates putting public health or public safety at risk; (ii) in the case of a licence required for the purpose of conserving the natural heritage, there is a serious risk of deer of the species and description to which the application relates causing deterioration of the natural heritage; (iii) in the case of a licence required for the purpose of preventing serious damage to property, property on the land has been seriously damaged in the year preceding the licence application; (iv) to achieve the purpose in question there is no satisfactory alternative to taking and killing the deer of the species and description to which the application relates between the expiry of the first hour after sunset and the beginning of the last hour before sunrise; (v) the applicant has a right of entry to the land for the purpose of taking or killing deer under the licence; and (vi) if the licence is to relate to red, roe or fallow deer, the taking or killing to be authorised by the licence will not compromise the ability of that species to maintain the population of deer in question on a long-term basis within its natural range in the numbers which exist after the taking or killing has taken place: s 8(3F) (as so added).

For these purposes, 'natural heritage' means flora and fauna, geological or physiographical features or natural beauty and amenity of the countryside: s 8(6) (added by SI 2007/2183).

A licence under the Deer Act 1991 s 8(3A) or (3D) must state (A) the purpose for which it is granted; (B) the land to which it relates; (C) the species and descriptions of deer to which it relates; (D) the method by which the licensee may take or kill deer; and (E) the period, not exceeding two years, for which it is valid: s 8(3G) (as so added). Natural England and the Welsh Ministers may charge fees for the consideration of applications for licences under s 8(3A) and (3D): s 8(3H) (as so added).

A licence under the Deer Act 1991 s 8 may be revoked by the licensor or granted subject to conditions: s 8(4) (amended by SI 2007/2183). Contravention of or failure to comply with a provision of a licence is an offence in itself, without prejudice to any other penalty to which the offender may be subject: Deer Act 1991 s 8(5) (amended by SI 2007/2183). For penalties see PARA 983. As to Natural England and the Countryside Council for Wales see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 523, 524.

UPDATE

973-990 Meaning of 'deer' ... Permits for entering and remaining in Antarctica

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(1) PROTECTION OF DEER/ (ii) Unlawful Taking, Driving or Killing of Deer/977. Poaching of deer.

(ii) Unlawful Taking, Driving or Killing of Deer

977. Poaching of deer.

Any person who enters any land without the consent of the owner or occupier, or without other lawful authority¹, in search or pursuit of any deer with the intention of taking, killing or injuring it commits an offence². So too does any person who while on any land intentionally takes, kills or injures any deer, or attempts to do so, or searches for or pursues any deer with the intention of doing so, or removes the carcase of any deer, without such consent or other lawful authority³. Any authorised person⁴ who suspects with reasonable cause that any person is committing or has committed either of the above offences on any land may require that person to give his full name and address and to quit that land forthwith; failure to comply with any such requirement is also an offence⁵.

1 A person who does anything in the belief that he would have the consent of the owner or occupier of the land if the owner or occupier knew of his doing it and the circumstances of it, or that he has other lawful authority to do it, does not commit the offence: Deer Act 1991 s 1(3).

2 Deer Act 1991 s 1(1). For penalties see PARA 983. As to 'taking' and 'killing' see PARA 976 notes 2, 3.

3 Deer Act 1991 s 1(2). The defence available under s 1(3) also applies to this offence; see note 1. For penalties see PARA 983.

4 'Authorised person' means the owner or occupier of the land or any person authorised by the owner or occupier, and includes any person having the right to take or kill deer on the land: Deer Act 1991 s 1(5).

5 Deer Act 1991 s 1(4). For penalties see PARA 983.

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973-990 Meaning of 'deer' ... Permits for entering and remaining in Antarctica

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(1) PROTECTION OF DEER/ (ii) Unlawful Taking, Driving or Killing of Deer/978. Prohibited weapons and other articles.

978. Prohibited weapons and other articles.

It is an offence¹ to set in position any article which is a trap, snare or poisoned or stupefying bait, and is of such a nature and so placed as to be calculated to cause bodily injury to any deer² coming in contact with it³; or to use for the purpose of killing or taking any deer any such trap, snare or bait, or any net⁴, or to use for the purpose of injuring, killing or taking any deer any firearm or ammunition of a specified kind⁵, any arrow, spear or similar missile⁶, or any missile, however discharged, carrying or containing any poison, stupefying drug or muscle-relaxing agent⁷. It is also an offence to have in one's possession⁸ for the purpose of committing an offence against the Deer Act 1991 any of the above prohibited articles or any firearm or ammunition⁹.

There are exceptions where a trap or net is set in position or used for the purpose of preventing suffering by an injured or diseased deer¹⁰; where an act is done under a licence granted by Natural England or the Countryside Council for Wales¹¹; where a person uses any reasonable means¹² for the purpose of killing any deer if he reasonably believes that the deer has been so seriously injured (otherwise than by his unlawful act) or is in such a condition that to kill it is an act of mercy¹³; where a person uses a gun and ammunition of specified size¹⁴ as a slaughtering instrument¹⁵; and where a person uses a rifle and ammunition of a specified type¹⁶ for the purpose of taking or killing or injuring any Chinese water deer (*Hydropotes inermis*) or muntjac deer (*Muntiacus reevesi*)¹⁷. Specified persons¹⁸ are not guilty of an offence of using a prohibited firearm or ammunition¹⁹ by reason of the use of any smooth-bore gun which meets certain specifications as to the gauge and size of cartridge²⁰.

1 For penalties see PARA 983.

2 As to the meaning of 'deer' see PARA 973.

3 Deer Act 1991 s 4(1)(a).

4 Deer Act 1991 s 4(1)(b). As to 'taking' and 'killing' see PARA 976 notes 2, 3.

5 Deer Act 1991 s 4(2)(a). The firearms prohibited are smooth-bore guns, any rifle having a calibre of less than .240 inches or a muzzle-energy of less than 2,305 joules (1,700 foot pounds), and any air gun, air rifle or air pistol; the ammunition prohibited is any cartridge for use in a smooth-bore gun and any bullet for use in a rifle other than a soft-nosed or hollow-nosed bullet: s 4(2)(a), Sch 2. The Secretary of State or the Welsh Ministers may by statutory instrument, subject as respects England to annulment in pursuance of a resolution of either House of Parliament, amend Sch 2: ss 4(3), 15(1), (2) (s 15(2) substituted by SI 2007/2183). As to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

6 Deer Act 1991 s 4(2)(b).

7 Deer Act 1991 s 4(2)(c).

8 'Possession' means possession in the popular sense: see *Webb v Baker* [1916] 2 KB 753, DC; *Oliver v Goodger* [1944] 2 All ER 481, DC; and *Towers & Co Ltd v Gray* [1961] 2 QB 351, [1961] 2 All ER 68, DC.

9 Deer Act 1991 s 5(2). The offences referred to are those against ss 2-4. See PARA 976; and text and notes 1-7. 'Firearm' and 'ammunition' have the same meanings as in the Firearms Act 1968 s 57(1), (2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 630 et seq); Deer Act 1991 s 16.

- 10 Deer Act 1991 s 6(3); this exception applies to an offence under s 4(1)(a) or (b) (see text and notes 3-4).
- 11 The Deer Act 1991 s 8 applies in respect of s 4; see PARA 976 note 14.
- 12 'Any reasonable means' means any method of killing a deer that can reasonably be expected to result in rapid loss of consciousness and death and which is appropriate in all the circumstances (including in particular what the deer is doing, its size, its distance from the closest position safely attainable by the person attempting to kill the deer and its position in relation to vegetative cover): Deer Act 1991 s 6(4A) (added by SI 2007/2183).
- 13 Deer Act 1991 s 6(4) (substituted by SI 2007/2183). This exception applies to an offence under s 4(1) or (2) (see text and notes 1-7).
- 14 In order to come within this exception, which applies to offences under the Deer Act 1991 s 4(2)(a) (see text and note 5), the gun must be smooth-bore and of a gauge not less than 12 bore, must have a barrel less than 24 inches (609.6 millimetres) in length, and must be loaded with a cartridge purporting to contain shot none of which is less than .203 inches (5.16 millimetres) in diameter (ie size AAA or larger): s 6(5)(a)-(c).
- 15 Deer Act 1991 s 6(5).
- 16 In order to come within this exception, which applies to offences under the Deer Act 1991 s 4(2)(a) (see text and note 5), the rifle must have a calibre of not less than .220 inches and a muzzle energy of not less than 1,356 joules (1,000 foot pounds), and the bullet must be a soft-nosed or hollow-nosed bullet weighing not less than 3.24 grammes (50 grains): Deer Act 1991 s 6(6)(a), (b) (s 6(6) added by SI 2007/2183).
- 17 Deer Act 1991 s 6(6) (as added: see note 16).
- 18 As to such persons and the circumstances in which the defence is not available see PARA 976 note 6.
- 19 Is an offence under the Deer Act 1991 s 4(2)(a): see text and note 5.
- 20 Deer Act 1991 s 7(2). The specifications which must be satisfied are as follows: (1) the gun must be smooth-bore and of a gauge not less than 12 bore; and (2) it must be loaded with either (a) a cartridge containing a single, non-spherical projectile weighing not less than 350 grains (22.68 grammes); or (b) a cartridge purporting to contain shot each of which is .203 inches (5.16 millimetres) in diameter (ie size AAA): s 7(2)(a), (b). The Secretary of State or the Welsh Ministers may by order made by statutory instrument repeal this exception or make any amendment or addition to the conditions and specifications contained therein: ss 7(5)-(7), 15(1) (s 7(7) amended by SI 2002/794). As respects England, a draft of the order must be laid before and approved by a resolution of each House of Parliament: Deer Act 1991 s 15(3). As respects Wales see note 5. At the date at which this volume states the law, no such order had been made.

UPDATE

973-990 Meaning of 'deer' ... Permits for entering and remaining in Antarctica

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(1) PROTECTION OF DEER/ (ii) Unlawful Taking, Driving or Killing of Deer/979. Prohibition on use of vehicles.

979. Prohibition on use of vehicles.

It is an offence¹ to discharge a firearm² or project a missile at a deer³ from a mechanically propelled vehicle when the vehicle is moving or when its engine is running⁴, or to use such a vehicle for the purpose of driving deer⁵, except in the case of anything done by or with the written authority of the owner of any enclosed land where deer are usually kept, in relation to deer on that land⁶.

1 For penalties see PARA 983.

2 As to the meaning of 'firearm' see PARA 978 note 9.

3 As to the meaning of 'deer' see PARA 973.

4 Deer Act 1991 s 4(4)(a) (amended by SI 2007/2183). 'Vehicle' includes an aircraft, hovercraft or boat: Deer Act 1991 s 16.

5 Deer Act 1991 s 4(4)(b).

6 Deer Act 1991 s 4(5).

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Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(1) PROTECTION OF DEER/ (iii) Regulation of Dealing in Venison/980. Dealing in venison from deer unlawfully taken or killed.

(iii) Regulation of Dealing in Venison

980. Dealing in venison from deer unlawfully taken or killed.

Any person who sells or offers or exposes for sale¹ or has in his possession for sale, or purchases or offers to purchase or receives, any venison² which he knows or has reason to believe comes from a deer which has been unlawfully taken or killed³, commits an offence the penalty for which on summary conviction is a fine not exceeding level 4 on the standard scale, imprisonment for up to three months, or both⁴.

1 'Sale' includes barter and exchange, and 'sell' and 'purchase' are to be construed accordingly: Deer Act 1991 s 10(5).

2 'Venison' includes imported venison, and means any carcase of a deer, or any edible part thereof, which has not been cooked or canned: Deer Act 1991 s 16.

3 In contrary to the provisions of the Deer Act 1991 ss 1-9: see PARAS 976-979.

4 Deer Act 1991 s 10(3), (4). As to the standard scale see PARA 738 note 1. As from a day to be appointed, the penalty of imprisonment is removed: s 10(3) (prospectively amended by the Criminal Justice Act 2003 s 332, Sch 37 Pt 9). At the date at which this volume states the law, no such day had been appointed.

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973-990 Meaning of 'deer' ... Permits for entering and remaining in Antarctica

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(1) PROTECTION OF DEER/ (iv) Legal Proceedings/981. Attempts to commit offences.

(iv) Legal Proceedings

981. Attempts to commit offences.

Any person who attempts¹ to commit an offence of taking or killing deer in close season or at night, or of using prohibited weapons or other articles² is guilty of an offence against the Deer Act 1991 and is punishable in like manner as for the offence itself³.

¹ As to attempts to commit a criminal offence see generally **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 79 et seq.

² ie an offence under the Deer Act 1991 ss 2-4; see PARAS 976, 978-979.

³ Deer Act 1991 s 5(1). As to penalties under the Act see PARA 983.

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973-990 Meaning of 'deer' ... Permits for entering and remaining in Antarctica

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Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(1) PROTECTION OF DEER/ (iv) Legal Proceedings/982. Powers of search and seizure.

982. Powers of search and seizure.

If a constable suspects with reasonable cause¹ that a person is committing or has committed any offence under the Deer Act 1991², he may without warrant stop and search that person and search or examine any vehicle, animal, weapon or other thing which that person may then be using (if he suspects with reasonable cause that evidence of the commission of the offence is to be found on the person or on the vehicle, etc)³.

A constable may also seize and detain for the purposes of proceedings under the Act anything which is evidence of the commission of the offence and any deer, venison⁴, vehicle, animal, weapon or other thing which is liable to be forfeited⁵. For the purposes of exercising these powers, or for arresting a person in accordance with his general powers of arrest⁶ for an offence under the Act, he may enter any land other than a dwelling house⁷. He may sell any deer or venison seized, and the net proceeds of the sale are then liable to be detained and forfeited in the same manner as the deer sold; but he is not liable if he neglects or fails to exercise this power⁸.

1 These words require, it is submitted, that the constable has reasonable grounds for suspicion and also that he does actually suspect: see *R v Banks* [1916] 2 KB 621; *Nakkuda Ali v Jayaratne* [1951] AC 66, PC. The existence of reasonable grounds for suspicion, and of the actual suspicion, are questions of fact for the court to decide: see *McArdle v Egan* (1933) 150 LT 412, CCA; *Nakkuda Ali v Jayaratne* [1951] AC 66, PC. Cf *Liversidge v Anderson* [1942] AC 206, [1941] 3 All ER 338, HL.

2 See PARAS 976-981.

3 Deer Act 1991 s 12(1)(a), (b).

4 As to the meaning of 'venison' see PARA 980 note 2.

5 Deer Act 1991 s 12(1)(c). As to forfeiture see PARA 983.

6 Under the Police and Criminal Evidence Act 1984 s 24 (as to which see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 924).

7 Deer Act 1991 s 12(2) (amended by the Serious Organised Crime and Police Act 2005 s 111, Sch 7 para 61).

8 Deer Act 1991 s 12(3).

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973-990 Meaning of 'deer' ... Permits for entering and remaining in Antarctica

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Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(1) PROTECTION OF DEER/ (iv) Legal Proceedings/983. Proceedings, penalties and forfeiture.

983. Proceedings, penalties and forfeiture.

In general, offences under the Deer Act 1991 are punishable on summary conviction by a fine not exceeding level 4 on the standard scale¹, imprisonment for a term not exceeding three months, or both². Where such an offence under the Act is committed in respect of more than one deer the maximum fine is determined as if the person convicted had been convicted of a separate offence in respect of each deer³. Proceedings for an offence under the Act may be brought within the period of six months beginning with the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge⁴, but this does not authorise the commencement of proceedings for an offence more than two years after the date on which the offence was committed⁵.

The convicting court may also order the forfeiture of any deer or venison⁶ in respect of which the offence was committed or which was found in the defendant's possession, and of any vehicle, animal, weapon or other thing which was used to commit the offence or which was capable of being used to take, kill or injure deer and was found in the defendant's possession⁷.

Where a person is convicted of an offence relating to poaching, selling or dealing in venison⁸, the court may additionally cancel any firearm or shotgun certificate held by him⁹. When such an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly¹⁰.

1 As to the standard scale see PARA 738 note 1.

2 Deer Act 1991 s 9(1). The exceptions, which relate to dealings in venison, are noted in PARA 980. As from a day to be appointed, the maximum term of imprisonment is increased to 51 weeks: s 9(1) (prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 43). At the date at which this volume states the law, no such day had been appointed.

3 Deer Act 1991 s 9(2). As to the meaning of 'deer' see PARA 973.

4 Deer Act 1991 s 9(3) (s 9(3)-(6) added by the Natural Environment and Rural Communities Act 2006 s 53, Sch 6 para 5). For this purpose, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge is conclusive evidence of that fact: Deer Act 1991 s 9(5) (as so added). A certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved: s 9(6) (as so added).

5 Deer Act 1991 s 9(4) (as added: see note 4).

6 As to the meaning of 'venison' see PARA 980 note 2.

7 Deer Act 1991 s 13(1). Note that there is no power of sale.

8 Ie an offence under the Deer Act 1991 ss 1, 10; see PARAS 977, 980.

9 Deer Act 1991 s 13(2) (amended by SI 2007/2007). Where the court cancels a certificate, it must notify in writing the chief officer of police by whom the certificate was granted, and the chief officer must by notice in writing require the holder of the certificate to surrender it. If he fails to do so within 21 days of the date of that requirement he commits an offence and is liable on summary conviction to a maximum fine of level 2 on the standard scale: Deer Act 1991 s 13(3).

10 Deer Act 1991 s 14(1) (amended by SI 2007/2007). Where the affairs of a body corporate are managed by its members, this applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: Deer Act 1991 s 14(2).

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973-990 Meaning of 'deer' ... Permits for entering and remaining in Antarctica

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Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (2) PROTECTION OF BADGERS/984. Taking, injuring or killing badgers or interfering with badger setts.

(2) PROTECTION OF BADGERS

984. Taking, injuring or killing badgers or interfering with badger setts.

The Protection of Badgers Act 1992 gives special protection to badgers.

It is an offence¹ wilfully² to kill, injure or take a badger³, or to attempt to do so⁴; or to dig for any badger⁵. It is also an offence⁶ to use in the course of killing or taking any badger (or attempting to do so) any badger tongs⁷; or to use for the purpose of killing or taking any badger certain firearms⁸.

It is also an offence⁹ for a person, intentionally or recklessly as to whether his actions will have the prohibited consequences, to interfere with a badger sett¹⁰ by (1) damaging a sett or any part of it; (2) destroying a sett; (3) obstructing access to or any entrance of a sett; (4) causing a dog to enter a sett; or (5) disturbing a badger when it is occupying a sett¹¹.

1 For general exceptions see PARA 988; as to enforcement, proceedings and penalties see PARA 989.

2 As to the meaning of 'wilfully' see PARA 863 note 13.

3 'Badger' means any member of the species *Meles meles*: Protection of Badgers Act 1992 s 14. Badgers are also given protection by the Wildlife and Countryside Act 1981 Pt I (ss 1-27) (see PARA 1015 et seq).

4 Protection of Badgers Act 1992 s 1(1). As to the position where a dog is present or used in the commission of this offence see PARA 989 text and notes 22-28. A person is not guilty of this offence by reason of the killing or taking or the attempted killing or taking of any badger, or the injuring of any badger in the course of taking it or attempting to kill or take it, if he shows that his action was necessary for the purpose of preventing serious damage to land, crops, poultry or any other form of property: s 7(1). However, this defence does not apply if it had become apparent, before the action was taken, that the action would prove necessary for the purposes mentioned and either a licence authorising the action had not been applied for as soon as was reasonably practicable thereafter, or an application for such a licence had been determined: s 7(2). As to licences see PARA 988. A person found committing this offence on any land may be required by the owner or occupier of the land, any servant of his, or any constable, to quit the land forthwith and also to give his name and address. If that person wilfully remains on the land, or refuses to give his full name or address, he commits an offence: s 1(5). As to penalties see PARA 989.

5 Protection of Badgers Act 1992 s 2(1)(c). As to the position where a dog is present or used in the commission of this offence see PARA 989 text and notes 22-28. The Act does not bind the Crown and no offence is committed by officers of the Department for the Environment, Food and Rural Affairs setting traps for badgers for testing in connection with bovine tuberculosis: *Cresswell v DPP* [2006] EWHC 3379 (Admin), sub nom *Currie v DPP* [2006] All ER (D) 429 (Nov).

6 See note 1.

7 Protection of Badgers Act 1992 s 2(1)(b). See also note 5.

8 Protection of Badgers Act 1992 s 2(1)(d). See also note 5. The firearms permitted are a smooth bore weapon of not less than 20 bore and a rifle using ammunition having a muzzle energy of not less than 160 foot pounds and a bullet weighing not less than 38 grains: s 2(1)(d). 'Firearm' and 'ammunition' have the same meaning as in the Firearms Act 1968 s 57(1), (2) (as to which see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 630, 634): Protection of Badgers Act 1992 s 14.

9 See note 1.

10 'Badger sett' means any structure or place which displays signs indicating current use by a badger: Protection of Badgers Act 1992 s 14. It does not include ground rising to the top surface above the tunnels and

chambers of a sett: *DPP v Green* [2001] 1 WLR 505, sub nom *Crown Prosecution Service v Green* (2000) 164 JP 477, DC.

11 Protection of Badgers Act 1992 s 3. A person is not guilty of an offence under s 3 if he shows that his action was necessary for the purpose of preventing serious damage to land, crops, poultry or any other form of property: s 8(1). As to when this defence does not apply see ss 7(2), 8(2); and note 4. A person is not guilty of an offence of damaging a sett or obstructing access to or an entrance of a sett, or of disturbing a badger in occupation if he shows that his action was the incidental result of a lawful operation and could not reasonably have been avoided: s 8(3).

UPDATE

973-990 Meaning of 'deer' ... Permits for entering and remaining in Antarctica

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (2) PROTECTION OF BADGERS/985. Possession of badgers.

985. Possession of badgers.

It is an offence¹ for any person to have in his possession or under his control any dead badger or any part of, or anything derived from, a dead badger²; and for any person to sell³, offer for sale or have in his possession or under his control any live badger⁴.

1 For exceptions see PARA 988; as to enforcement, proceedings and penalties see PARA 989.

2 Protection of Badgers Act 1992 s 1(3). A person has a defence if he shows that the badger had not been killed, or was not killed in contravention of the provisions of the Act; or if he shows that the thing in question had been sold (whether to him or to any other person) and, at the time of the purchase, the purchaser had no reason to believe that the badger had been killed in contravention of the Act: s 1(4). The offender may be required to quit land and give his name and address, as for an offence under s 1(1): see s 1(5); and PARA 984 note 4.

3 'Sale' includes hire, barter and exchange, and cognate expressions are to be construed accordingly: Protection of Badgers Act 1992 s 14.

4 Protection of Badgers Act 1992 s 4. This offence is not committed if a person has a live badger in his possession or under his control if it is in his possession or under his control in the course of his business as a carrier; or it has been disabled otherwise than by his act and he has taken it solely for the purpose of tending it, and it is necessary for that purpose for it to remain in that person's possession or under his control: s 9.

UPDATE

973-990 Meaning of 'deer' ... Permits for entering and remaining in Antarctica

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (2) PROTECTION OF BADGERS/986. Cruelty to badgers.

986. Cruelty to badgers.

It is an offence¹ for any person cruelly to ill-treat any badger².

¹ For exceptions see PARA 988; as to enforcement, proceedings and penalties see PARA 989.

² Protection of Badgers Act 1992 s 2(1)(a). The offences under s 2(1)(b)-(d), described in PARA 984, are also described in the sidenote to the section as offences of cruelty. This is to be distinguished from the concept of offences of cruelty under the Protection of Animals Act 1911 and of offences of causing unnecessary suffering under the Animal Welfare Act 2006: see PARA 826 et seq. As to the position where a dog is present or used in the commission of this offence see PARA 989 text and notes 22-28.

UPDATE

973-990 Meaning of 'deer' ... Permits for entering and remaining in Antarctica

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (2) PROTECTION OF BADGERS/987. Marking and ringing.

987. Marking and ringing.

It is an offence¹ for any person to mark, or attach any ring, tag or other marking device to, any badger².

1 For exceptions see PARA 988; as to enforcement, proceedings and penalties see PARA 989.

2 Protection of Badgers Act 1992 s 5.

UPDATE

973-990 Meaning of 'deer' ... Permits for entering and remaining in Antarctica

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (2) PROTECTION OF BADGERS/988. Exceptions; licences.

988. Exceptions; licences.

A person is not guilty of an offence¹ by reason only of the following: the taking or attempted taking of any badger which had been disabled otherwise than by his act and was so taken or to be taken solely for the purpose of tending it; the killing or attempted killing of any badger which appeared to be so seriously injured or in such a condition that to kill it would be an act of mercy; or the unavoidable killing or injuring of any badger as an incidental result of a lawful action². Nor is a person guilty by reason only of doing anything which is authorised under the Animals (Scientific Procedures) Act 1986³.

Additionally, a licence may be granted to any person by the appropriate conservation body authorising that person to kill, take, sell, have in his possession, or mark badgers or interfere with setts in certain limited circumstances⁴. The Secretary of State or the Welsh Ministers⁵ may also grant a licence to any person, authorising him to kill or take badgers or interfere with setts within an area specified in the licence, by any means so specified for the purpose of preventing the spread of disease⁶ or for the purpose of preventing serious damage to land, crops, poultry or any other form of property, or to interfere with any badger sett for the purpose of any agricultural or forestry operation or any work to maintain or improve watercourses, or any drainage works including works for defence against sea or tidal water⁷. The Secretary of State, the Welsh Ministers or the appropriate conservation body may grant a licence to interfere with a badger sett for the purpose of controlling foxes in order to protect livestock, game or wildlife⁸. A licence may be revoked at any time by the authority that granted it⁹. The licence may be granted subject to compliance with any conditions specified in it¹⁰. Any person who contravenes or fails to comply with any condition imposed on the grant of a licence commits an offence, and this is without prejudice to any other liability to a penalty which he may have incurred under the Protection of Badgers Act 1992 or any other Act¹¹.

A licence under these provisions must not be unreasonably withheld or revoked¹².

1 Ie under the Protection of Badgers Act 1992: see PARAS 984-987.

2 Protection of Badgers Act 1992 s 6(a)-(c).

3 Protection of Badgers Act 1992 s 6(d); see PARA 875 et seq.

4 See the Protection of Badgers Act 1992 s 10(1)(a)-(c), (4) (s 10(1), (4) amended by the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 para 137). As to the appropriate conservation bodies, ie Natural England and the Countryside Council for Wales, see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 523, 524.

Licences may be granted authorising the taking or killing (by specified means), sale, or possession of a specified number of badgers for scientific or educational purposes, or for the conservation of badgers (Protection of Badgers Act 1992 s 10(1)(a)); authorising the taking (by specified means), sale, or possession of a specified number of badgers for the purpose of any zoological gardens or collection specified in the licence (s 10(1)(b)); and authorising the marking of badgers, or the attaching to them of any ring, tag or other marking device as specified in the licence, for the purpose of ringing and marking (s 10(1)(c)); and authorising the interference with any sett for the purpose of a development under the Town and Country Planning Act 1990 s 55(1) (Protection of Badgers Act 1992 s 10(1)(d)), of investigating or preserving a monument under the Ancient Monuments and Archaeological Areas Act 1979 s 1 (Protection of Badgers Act 1992 s 10(1)(e)) or of investigating whether any offence has been committed or gathering evidence in connection with proceedings before any court (s 10(1)(f)). The licence will specify the area in which the activity is authorised: see s 10(1)(a), (b), (d)-(f).

5 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

6 If the use of poison is sanctioned by the licence for this purpose, it is a defence in proceedings under the Protection of Animals Act 1911 s 8(b) (as to which see PARA 864) to show that the act alleged to constitute the offence was done under the authority of such a licence and that any conditions specified in the licence were complied with: Protection of Badgers Act 1992 s 10(10).

7 Protection of Badgers Act 1992 s 10(2), (5) (s 10(5) amended by SI 2002/794). The Secretary of State or the Welsh Ministers must consult from time to time with the appropriate conservation body as to the issue of licences for the purpose of preventing serious damage to property or in relation to agricultural, forestry or drainage works, and may not grant a licence of any description unless he has been advised by that body as to the circumstances in which, in its opinion, licences of that description should be granted: Protection of Badgers Act 1992 s 10(6) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 137).

8 Protection of Badgers Act 1992 s 10(3) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 137).

9 Protection of Badgers Act 1992 s 10(8).

10 See the Protection of Badgers Act 1992 s 10(1)-(3).

11 Protection of Badgers Act 1992 s 10(8). As to enforcement, proceedings and penalties see PARA 989. The exceptions described in the text to notes 1-3 apply equally to this offence.

12 Protection of Badgers Act 1992 s 10(9).

UPDATE

973-990 Meaning of 'deer' ... Permits for entering and remaining in Antarctica

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

988 Exceptions; licences

NOTE 6--See *R (on the application of Badger Trust) v Welsh Ministers* [2010] EWHC 768 (Admin), [2010] All ER (D) 94 (Apr) (cull that, on expert advice, would lead to substantial reduction in bovine tuberculosis allowed).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (2) PROTECTION OF BADGERS/989. Enforcement, proceedings and penalties.

989. Enforcement, proceedings and penalties.

A constable who has reasonable grounds for suspecting that any person is committing an offence under the Protection of Badgers Act 1992, or that he has committed such an offence and evidence of the commission of the offence is to be found on him or any vehicle or article he has with him, may without warrant stop and search him and search any vehicle or article he has with him; and he may seize and detain for the purposes of proceedings anything which may be evidence of the commission of the offence, or may be liable to be forfeited¹. The court before which any person is convicted of such an offence must order the forfeiture of any badger or badger's skin in respect of which the offence was committed, and may, if it thinks fit, order the forfeiture of any weapon or article in respect of or by means of which the offence was committed².

In any proceedings for an offence consisting of attempting to kill, injure or take a badger³, if there is evidence from which it could be reasonably concluded that at the material time the accused was attempting to kill, injure or take a badger, he is presumed to have been attempting to do so unless the contrary is shown⁴. Similarly, in any proceedings for an offence of digging for a badger⁵, if there is evidence from which it could reasonably be concluded that at the material time the accused was digging for a badger, he is presumed to have been doing so unless the contrary is shown⁶.

The following offences, namely:

- 200 (1) taking, injuring or killing a badger, or attempting to do so⁷;
- 201 (2) possession of a dead badger or anything derived therefrom⁸;
- 202 (3) cruelty to a badger⁹; and
- 203 (4) interfering with badger setts¹⁰,

are punishable on summary conviction with imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both¹¹.

The following offences, namely:

- 204 (a) selling or possessing a live badger¹²;
- 205 (b) marking or ringing a badger¹³;
- 206 (c) contravention of or failure to comply with a condition of a licence¹⁴; and
- 207 (d) having custody of a dog in contravention of a court order, or failing to deliver custody of a dog for destruction when required¹⁵,

are punishable on summary conviction with a fine not exceeding level 5 on the standard scale¹⁶.

Failure to quit land, or to give name and address, when required to do so under the Protection of Badgers Act 1992¹⁷ is punishable on summary conviction with a fine not exceeding level 3 on the standard scale¹⁸.

If an offence mentioned in heads (1) to (4) or (a) to (d) above was committed in respect of more than one badger the maximum fine is to be determined as if the person convicted has been convicted of a separate offence in respect of each badger¹⁹.

Proceedings in England and Wales for a summary offence under the Protection of Badgers Act 1992 may be brought within the period of six months beginning with the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge²⁰, but this does not authorise the commencement of proceedings for an offence more than two years after the date on which the offence was committed²¹.

Where a dog has been used in or was present at the commission of an offence relating to the taking, injuring or killing of badgers, or to cruelty to badgers, or interfering with badger setts²², the court may, on convicting the offender, in addition to or substitution for any other sentence, order the destruction²³ or disposal of the dog or disqualify²⁴ the offender from having custody of a dog for such period as it thinks fit²⁵. Where an order is made for destruction or disposal, the court may appoint a person to undertake such destruction or disposal, and require any person having custody of the dog to give it up for that purpose²⁶. The offender may be ordered to pay the expenses of destruction or disposal and of the keeping of the dog before destruction or disposal²⁷. A dog must not be destroyed pursuant to such an order until the end of the period for making an appeal, and if notice of appeal is given in that period, until the appeal is determined or withdrawn, unless the owner of the dog gives notice to the court which made the order that he does not intend to appeal against it²⁸.

1 Protection of Badgers Act 1992 s 11.

2 Protection of Badgers Act 1992 s 12(4).

3 *Ie* under the Protection of Badgers Act 1992 s 1(1); see PARA 984.

4 Protection of Badgers Act 1992 s 1(2). The onus of proof is therefore on the defendant to show the contrary. It is submitted that, in accordance with general principles, the standard of proof is the balance of probabilities. See PARA 998 note 9.

5 *Ie* under the Protection of Badgers Act 1992 s 2(1)(c); see PARA 984.

6 Protection of Badgers Act 1992 s 2(2); and see note 4.

7 *Ie* an offence contrary to the Protection of Badgers Act 1992 s 1(1); see PARA 984.

8 *Ie* an offence contrary to the Protection of Badgers Act 1992 s 1(3); see PARA 985.

9 *Ie* an offence contrary to the Protection of Badgers Act 1992 s 2; see PARAS 984, 986.

10 *Ie* an offence contrary to the Protection of Badgers Act 1992 s 3; see PARA 984.

11 Protection of Badgers Act 1992 s 12(1). As to the standard scale see PARA 738 note 1.

12 *Ie* an offence contrary to the Protection of Badgers Act 1992 s 4; see PARA 985.

13 *Ie* an offence contrary to the Protection of Badgers Act 1992 s 5; see PARA 987.

14 *Ie* an offence contrary to the Protection of Badgers Act 1992 s 10(8); see PARA 988.

15 *Ie* an offence contrary to the Protection of Badgers Act 1992 s 13(7); see text and notes 24, 26.

16 Protection of Badgers Act 1992 s 12(1).

17 *Ie* contrary to the Protection of Badgers Act 1992 s 1(5); see PARAS 984 note 4, 985 note 2.

18 Protection of Badgers Act 1992 s 12(3).

19 Protection of Badgers Act 1992 s 12(2).

20 Protection of Badgers Act 1992 s 12ZA(1) (s 12ZA added by the Natural Environment and Rural Communities Act 2006 s 53, Sch 6 para 6).

21 Protection of Badgers Act 1992 s 12ZA(2) (as added: see note 20). For the purposes of s 12ZA, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge is conclusive evidence of that fact: s 12ZA(3) (as so added). A certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved: s 12ZA(4) (as so added).

22 It is an offence under the Protection of Badgers Act 1992 s 1(1), s 2 or s 3; see PARAS 984, 986.

23 Where the offender is not the owner of the dog, the owner may appeal to the Crown Court: Protection of Badgers Act 1992 s 13(3).

24 A person so disqualified may apply after one year for a direction terminating the disqualification: Protection of Badgers Act 1992 s 13(5) (amended by the Courts Act 2003 s 109(1), Sch 8 para 359(a)). On such application regard must be had to the applicant's character, his conduct since disqualification, and other circumstances of the case: Protection of Badgers Act 1992 s 13(6)(a). The applicant may be ordered to pay all or part of the costs of the application: s 13(6)(b). If an application is refused no further application may be made for a further period of one year: s 13(6). Any person who has custody of a dog in contravention of a disqualification order is guilty of an offence: s 13(7)(a). See text and notes 15-16.

25 Protection of Badgers Act 1992 s 13(1).

26 Protection of Badgers Act 1992 s 13(2)(a). Failure to comply with such a requirement is an offence: s 13(7)(b). See text and notes 15-16.

27 Protection of Badgers Act 1992 s 13(2)(b). Any sum ordered to be so paid is recoverable summarily as a civil debt: s 13(8). As to the recovery of civil debts see the Magistrates' Courts Act 1980 ss 58, 96; and **MAGISTRATES** vol 29(2) (Reissue) PARAS 826, 828.

28 Protection of Badgers Act 1992 s 13(4).

UPDATE

973-990 Meaning of 'deer' ... Permits for entering and remaining in Antarctica

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(3) PROTECTION OF ANTARCTIC FAUNA/990. Permits for entering and remaining in Antarctica.

(3) PROTECTION OF ANTARCTIC FAUNA

990. Permits for entering and remaining in Antarctica.

A person who is on an expedition organised in the United Kingdom or making his final departure from the United Kingdom (a British expedition) may not enter or remain in Antarctica¹ unless he has been granted a permit by the Secretary of State². The requirement does not apply to those who are travelling through, on or above the high seas to an immediate destination outside Antarctica, or to those entering or remaining in Antarctica for the sole purpose of fishing for profit³. It is an offence to contravene the permit requirement, and where the offence is committed by a person who is on an expedition in respect of which a permit has been granted to another person and who is specified, or of a description specified, in the permit, that other person is also guilty of an offence⁴. If a person's place of final departure for Antarctica was the United Kingdom and he enters or remains in Antarctica without a permit, the operator and master of the vessel, or the operator and commander of the aircraft, on which the person enters Antarctica are also guilty of an offence⁵.

A person may not remain in Antarctica on a station maintained by or on behalf of a United Kingdom national (a British station) unless the Secretary of State has granted a permit authorising him to do so⁶. It is an offence for a person to contravene the permit requirement, and where the offence is committed by a person who is on a station in respect of which a permit has been granted to another person and who is specified, or of a description specified, in the permit, that other person is also guilty of an offence⁷.

A British vessel or aircraft may not enter Antarctica unless the Secretary of State has granted a permit to the operator of a vessel or aircraft which is specified, or of a description specified, in the permit authorising him to enter Antarctica on occasions or in circumstances specified in the permit, or unless authorisation has been granted by another contracting party⁸. The requirement does not apply to vessels or aircraft travelling to an immediate destination outside Antarctica, or to vessels entering Antarctica for the sole purpose of fishing for profit⁹. If the requirement is contravened, the operator and master of the vessel, or the operator and commander of the aircraft are also guilty of an offence¹⁰.

1 'Antarctica' means the continent of Antarctica (including its ice-shelves), all islands south of 60 degrees South latitude (including all areas of continental shelf which are adjacent to that continent or those islands and which are south of 60 degrees South latitude), and all sea and airspace south of 60 degrees South latitude: Antarctic Act 1994 s 1(1). 'Continental shelf' is to be construed in accordance with the rules of international law: s 1(2). As to the territorial extent of the Act, see the Antarctic Act 1994 (Overseas Territories) Order 1995, SI 1995/1030 (amended by virtue of the British Overseas Territories Act 2002 s 2(3), and SI 1996/2593); the Antarctic Act 1994 (Gibraltar) Order 1996, SI 1996/2593; the Antarctic Act 1994 (Guernsey) Order 1995, SI 1995/1033; the Antarctic Act 1994 (Jersey) Order 1995, SI 1995/1034; and the Antarctic Act 1994 (Isle of Man) Order 1995, SI 1995/1035. As to the territorial extent of the Antarctic Regulations 1995, SI 1995/490 (amended by SI 1995/2741; SI 1998/1007; SI 2000/2147; SI 2002/2054; 2003/323; SI 2004/2782; and SI 2006/680), see the Antarctic (Guernsey) Regulations 1997, SI 1997/2966, the Antarctic (Jersey) Regulations 1997, SI 1997/2967, and the Antarctic (Isle of Man) Regulations 1997, SI 1997/2968.

The Antarctic Act 1994 repeals and replaces the Antarctic Treaty Act 1967, though certain repeals had not been brought into force at the date at which this volume states the law. The provisions of the 1967 Act still unrepealed are: s 6 (power to make orders giving effect to Agreed Measures), s 7(2)(b), (7) (further powers exercisable by Order in Council), s 8 (proceedings and evidence), s 9 (extension of Act), s 10 (interpretation and supplementary), s 11 (short title). In consequence, certain subordinate legislation remains in force under those provisions, namely: the Antarctic Treaty (Agreed Measures) (No 2) Order 1988, SI 1988/1296 (amended by

virtue of the Criminal Justice Act 1982 s 52; and the British Overseas Territories Act 2002 s 2); the Antarctic Treaty (Specially Protected Areas) Order 1968, SI 1968/888 (amended by SI 1977/1235; SI 1988/587; SI 1991/756); the Antarctic Treaty (Specially Protected Areas) Order 1971, SI 1971/1236; the Antarctic Treaty (Specially Protected Areas) Order 1977, SI 1977/1235; the Antarctic Treaty (Specially Protected Areas) Order 1988, SI 1988/587; the Antarctic Treaty (Specially Protected Areas) Order 1991, SI 1991/756; the Antarctic Treaty Act 1967 (Isle of Man) Order 1970, SI 1970/1436 (amended by SI 1990/1198); and the Antarctic Treaty Act 1967 (Channel Islands) Order 1974, SI 1974/1109.

2 Antarctic Act 1994 s 3(1), (8). As to the procedure for applying for permits, and the information which must in certain circumstances be submitted in support of an application, see the Antarctic Regulations 1995, SI 1995/490, regs 4-6. If the Secretary of State decides not to grant a permit, he must inform the applicant in writing, giving his reasons: reg 7. As to service of any document on any person for the purposes of the Regulations or the Act see reg 3. The Regulations are made principally under the Antarctic Act 1994 s 14(1).

In addition, the Antarctic Regulations 1995, SI 1995/490, reg 10 sets out the circumstances in which the Secretary of State may suspend or revoke a permit, and the Antarctic Act Tribunal is established by regs 11, 12 to hear appeals against revocations and suspensions. As to the procedure for lodging appeals and for the conduct of appeal hearings see reg 13. That tribunal is under the supervision of the Council on Tribunals: Tribunals and Inquiries Act 1992 Sch 1 para 2A (added by SI 1995/2877); see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 57.

A permit may be granted subject to conditions (see the Antarctic Act 1994 s 13(1)), and if any person contravenes such a condition, he and the grantee of the permit (if different) are each guilty of an offence (s 13(2)). As to penalties see PARA 993.

In considering whether to grant a permit under the Antarctic Act 1994 ss 3-5, 12, or whether to attach any condition to a permit granted under those provisions, or whether to make regulations relating to permits under the Act, the Secretary of State must have regard to the Protocol (see note 3): Antarctic Act 1994 s 15.

Certain functions of the Secretary of State in this regard may be delegated: see s 16. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

3 Antarctic Act 1994 s 3(2). An expedition is a British expedition if it was organised in the United Kingdom, or the place of final departure for Antarctica of the persons on the expedition was in the United Kingdom: s 3(3). An expedition organised in and authorised in writing by another contracting party is not regarded as a British expedition: s 3(4). 'Another contracting party' means any state other than the United Kingdom that is a party to the Protocol on Environmental Protection to the Antarctic Treaty (Madrid, 4 October 1991): Antarctic Act 1994 s 2(1), (2).

4 Antarctic Act 1994 s 3(5), (6). For penalties see PARA 993.

5 Antarctic Act 1994 s 3(7). The 'commander' of an aircraft means the member of the flight crew designated as commander by the person having management of the vessel or aircraft (the 'operator'), or the pilot who is in command for the time being; the 'master' of a vessel includes any person who is in charge of the vessel other than a pilot; 'vessel' includes a hovercraft: s 31(1).

6 Antarctic Act 1994 s 4(1), (2), (5). See further note 2.

'United Kingdom national' means (1) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen; (2) a British subject under the British Nationality Act 1981; (3) a British protected person within the meaning of that Act; (4) a Scottish partnership; (5) a body incorporated under the law of any part of the United Kingdom: Antarctic Act 1994 s 31(1) (amended by virtue of the British Overseas Territories Act 2002 s 2(3)). See generally **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**.

7 Antarctic Act 1994 s 4(3), (4). For penalties see PARA 993.

8 Antarctic Act 1994 s 5(1), (5). 'British vessel' means a United Kingdom ship within the meaning of what is now the Merchant Shipping Act 1995 s 85(1)); 'British aircraft' means a British-controlled aircraft within the meaning of the Civil Aviation Act 1982 s 92(5) (see **AIR LAW** vol 2 (2008) PARA 619); Antarctic Act 1994 s 5(3). See further note 2.

9 Antarctic Act 1994 s 5(2).

10 Antarctic Act 1994 s 5(3). For penalties see PARA 993.

UPDATE

973-990 Meaning of 'deer' ... Permits for entering and remaining in Antarctica

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

990 Permits for entering and remaining in Antarctica

NOTE 1--SI 1995/490 further amended: SI 2008/3066, SI 2009/2354.

NOTE 2--Tribunals and Inquiries Act 1992 Sch 1 para 2A repealed: SI 2008/2833. SI 1995/490 regs 4, 6 amended: SI 2008/3066.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(3) PROTECTION OF ANTARCTIC FAUNA/991. Protection of fauna, flora and mineral resources.

991. Protection of fauna, flora and mineral resources.

Unless a permit¹ has been granted by the Secretary of State or written authorisation granted by another contracting party², it is an offence for a United Kingdom national in Antarctica³ to (1) intentionally kill, injure, capture, handle or molest any native mammal⁴ or native bird⁵; (2) while on foot intentionally disturb a breeding or moulting native bird, or a concentration of native mammals or native birds⁶; (3) use a vehicle, vessel or aircraft in a manner that disturbs a concentration of native mammals or native birds⁷; (4) use explosives or firearms in such a manner⁸; (5) remove or damage such quantities of any native plant that its local distribution or abundance will be significantly affected⁹; (6) significantly damage a concentration of native plants¹⁰; or (7) do anything that is likely to cause significant damage to the habitat of any native mammal, bird, plant or invertebrate¹¹.

Unless a permit has been granted by the Secretary of State, or written authorisation granted by another contracting party, it is an offence for a United Kingdom national to introduce into any part of Antarctica any animal of a species that is not indigenous to Antarctica, or any plant that is not a native plant¹². It is not an offence to keep an animal or plant on board a vessel in Antarctica¹³.

Provision is also made prohibiting the drilling, dredging or excavation for mineral resources in Antarctica, save with a permit granted by the Secretary of State¹⁴.

1 A permit for the activities described in this paragraph may be granted by the Secretary of State: Antarctic Act 1994 s 12. As to permits see further PARA 990 note 2. The Secretary of State may delegate his functions under s 12: see s 16. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 As to the meaning of 'another contracting party' see PARA 990 note 3.

3 Antarctic Act 1994 s 7(1), (2). As to the meaning of 'Antarctica' see PARA 990 note 1.

4 'Native mammal' means a mammal of any species indigenous to Antarctica or occurring there seasonally through natural migrations: Antarctic Act 1994 s 31(1).

5 Antarctic Act 1994 s 7(1)(a). 'Native bird' means a bird of any species indigenous to Antarctica or occurring there seasonally through natural migrations, and includes an egg of such a bird: s 31(1).

6 Antarctic Act 1994 s 7(1)(b).

7 Antarctic Act 1994 s 7(1)(c).

8 Antarctic Act 1994 s 7(1)(d).

9 Antarctic Act 1994 s 7(1)(e).

10 Antarctic Act 1994 s 7(1)(f). 'Native plant' means any terrestrial or freshwater vegetation, including bryophytes, lichens, fungi and algae, indigenous to Antarctica, and includes such vegetation at any stage of its life cycle including seeds and other propagules of such vegetation: s 31(1).

11 Antarctic Act 1994 s 7(1)(g). 'Native invertebrate' means a terrestrial or freshwater invertebrate indigenous to Antarctica or occurring there seasonally through natural migrations: s 31(1).

12 Antarctic Act 1994 s 8(1), (3).

13 Antarctic Act 1994 s 8(2).

14 See the Antarctic Act 1994 s 6.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(3) PROTECTION OF ANTARCTIC FAUNA/992. Special areas.

992. Special areas.

Unless a permit¹ has been granted by the Secretary of State or written authorisation granted by another contracting party², it is an offence for a United Kingdom national to enter or remain in an area in Antarctica³ designated by regulations as an area restricted under the Protocol⁴, and it is an offence for a United Kingdom national to damage, destroy or remove any part of a site or monument designated by regulations as an Antarctic historic site or monument⁵. Unless a permit has been granted by the Secretary of State, it is an offence for a United Kingdom national to enter or remain in a place that is in the area south of the Antarctic Convergence⁶ and that has been designated by regulations as a place protected under the Convention⁷.

1 A permit for the activities described in the text to notes 2-4 may be granted by the Secretary of State: Antarctic Act 1994 s 12. As to permits see further PARA 990 note 2. The Secretary of State may delegate his functions under ss 11, 12: see s 16. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 As to the meaning of 'another contracting party' see PARA 990 note 3.

3 As to the meaning of 'Antarctica' see PARA 990 note 1.

4 Antarctic Act 1994 s 9(1), (2). As to the areas which are restricted under the Protocol on Environmental Protection to the Antarctic Treaty see the Antarctic Regulations 1995, SI 1995/490, reg 14, Sch 1 (Sch 1 amended by SI 1998/1007; SI 2000/2147; SI 2002/2054; SI 2003/323; and SI 2004/2782). For penalties see PARA 993.

5 Antarctic Act 1994 s 10(1), (2). As to the areas designated as Antarctic historic sites and monuments see the Antarctic Regulations 1995, SI 1995/490, reg 15, Sch 2 (Sch 2 substituted by SI 2004/2782).

6 As to the meaning of 'Antarctic Convergence', see the Antarctic Act 1994 s 31(2).

7 Antarctic Act 1994 s 11(1)-(3). 'Convention' means the Convention on the Conservation of Antarctic Marine Living Resources (Canberra, 20 May 1980): Antarctic Act 1994 s 2(1). A permit for the activities described in s 11 is granted under that section. As to permits under the Act generally see PARA 990 note 2. As to the areas designated as protected places under the Convention see the Antarctic Regulations 1995, SI 1995/490, reg 16, Sch 3. As to delegation of functions see note 1.

UPDATE

992 Special areas

NOTES 4, 5--SI 1995/490 Schs 1, 2 further amended: SI 2008/3066, SI 2009/2354.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(3) PROTECTION OF ANTARCTIC FAUNA/993. Enforcement and offences.

993. Enforcement and offences.

A person guilty of an offence under Part II of the Antarctic Act 1994¹ is liable on conviction on indictment to imprisonment for a term not exceeding two years, to a fine, or to both, and on summary conviction, to a fine not exceeding the statutory maximum².

It is an offence to fail to produce a permit³ when duly required to do so⁴.

It is a defence to certain offences⁵ that the contravention occurred because of matters outside a person's control and that he took all reasonable precautions to avoid the contravention⁶. It is also a defence that a contravention occurred because of an emergency relating to the safety of human life, vessels or aircraft, the safety of equipment and facilities of high value, or the protection of the environment⁷.

Where offences are committed by a body corporate as a result of the connivance of a director, manager, secretary, or other similar officer of the body corporate, or by any person purporting to act in any such capacity, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against⁸.

Where a United Kingdom national⁹ does or omits to do anything in the unclaimed sector of Antarctica¹⁰ and that act or omission would have constituted an offence under the law of any part of the United Kingdom if it had occurred there, he is guilty of an offence as if the act or omission had taken place there, and is liable to be proceeded against and punished accordingly¹¹.

Where a United Kingdom national is an Antarctic Treaty official¹² and is in any part of Antarctica other than the unclaimed sector for the purpose of exercising his functions as an Antarctic Treaty official, and does or omits to do anything, and that act or omission would have constituted an offence under the law of any part of the United Kingdom if it had taken place there, he is guilty of an offence as if the act or omission had taken place there, and is liable to be proceeded against¹³.

Where a United Kingdom national is a Convention official¹⁴, and is on a vessel in any part of the area south of the Antarctic Convergence for the purpose of exercising his functions as a Convention official, and does or omits to do anything, and that act or omission would have constituted an offence under the law of any part of the United Kingdom if it had taken place in that part, he is guilty of an offence as if the act or omission had taken place there, and is liable to be proceeded against and punished accordingly¹⁵.

1 Ie the Antarctic Act 1994 Pt I (ss 1-20); see PARA 990 et seq.

2 Antarctic Act 1994 s 20. As to the statutory maximum see PARA 877 note 6.

3 Ie a permit under the Antarctic Act 1994 Pt I; see PARA 990 et seq.

4 Antarctic Act 1994 s 14(2). The Antarctic Regulations 1995, SI 1995/490, reg 9 sets out the circumstances in which a person may be required to produce a permit.

5 Ie under the Antarctic Act 1994 ss 3(5), (6), (7), 4(3), 5(4), 13(2), but not s 6. Proceedings for offences under the Act may be taken in the United Kingdom, and offences are deemed to have been committed there: s 17. Proceedings may only be instituted by the Secretary of State or a person authorised by him, or with the consent of the Director of Public Prosecutions: s 28(1). As to (1) the arrest of persons suspected of committing offences under s 11(2), s 13(2) or s 23 in any area south of the Antarctic Convergence or suspected of

committing any other offence under the Act in any part of Antarctica; (2) the conveyance in custody of an arrested person; (3) the seizure and detention of articles which may be used in evidence; and (4) securing the attendance of any person to give evidence or produce documents in proceedings relating to offences, see s 29(1), (2); and the Antarctic Regulations 1995, SI 1995/490, regs 17-20.

An offence under the Antarctic Act 1994 includes any offence of incitement, conspiracy or attempting to commit an offence under ss 3-20: s 27.

For the purposes of any proceedings for an offence a certificate signed by or on behalf of the Secretary of State and stating that at the time specified in the certificate (a) a state was or was not a party to the Protocol; (b) a person was or was not an Antarctic Treaty official as defined in s 22 (see note 12); or (c) a person was or was not a convention official as defined in s 23 (see note 14), is conclusive evidence of the facts stated in it: s 30(1). A document purporting to be a certificate is deemed to be such a certificate unless the contrary is proved: s 30(2). A document purporting to be a written authorisation is deemed to be such an authorisation unless the contrary is proved: s 30(3).

6 Antarctic Act 1994 s 18(1).

7 Antarctic Act 1994 s 18(2). The defence does not apply to a contravention of s 6(1) or to a contravention of a condition attached to a permit granted under s 6(3): s 18(3). An additional defence is provided in respect of an offence under s 7(2), namely that the act was done to relieve the suffering of a mammal or bird: s 18(4).

8 Antarctic Act 1994 s 19(1). In relation to a body corporate whose affairs are managed by its members, 'director' means a member of the body corporate: s 19(2).

9 As to the meaning of 'United Kingdom national' see PARA 990 note 6.

10 The land lying south of 60 degrees South latitude and between 150 degrees West longitude and 90 degrees West longitude: Antarctic Act 1994 s 21.

11 Antarctic Act 1994 s 21. Where by virtue of s 21, s 22 or s 23 a person is liable to be proceeded against for an offence in any part of the United Kingdom, the proceedings may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in that part: s 24.

12 'Antarctic Treaty official' means a person who has been designated as an observer by or on behalf of Her Majesty's government in the United Kingdom in accordance with the Antarctic Treaty art VII, or to a scientist who has been exchanged in accordance with the Antarctic Treaty art III(1)(b), or to a member of staff accompanying either such person: Antarctic Act 1994 s 22(2). 'Antarctic Treaty' means the Antarctic Treaty signed at Washington on 1 December 1959: Antarctic Act 1994 s 2(1).

13 Antarctic Act 1994 s 22(1). See also note 11.

14 'Convention official' means a person designated as an inspector or observer by a member of the Commission for the Conservation of Antarctic Marine Living Resources under art XXIV of the Convention on the Conservation of Antarctic Marine Living Resources drawn up at Canberra on 20 May 1980: Antarctic Act 1994 ss 2(1), 23(2).

15 Antarctic Act 1994 s 23(1). See also note 11.

UPDATE

993 Enforcement and offences

NOTE 5--See Serious Crime Act 2007 Sch 6 para 23 (references to common law offence of incitement).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(i) Protection of Wild Birds, Nests and Eggs/994. Protection of wild birds generally.

(4) PROTECTION OF BIRDS

(i) Protection of Wild Birds, Nests and Eggs

994. Protection of wild birds generally.

Wild birds are specially protected by the Wildlife and Countryside Act 1981¹.

It is an offence² intentionally to kill, injure or take any wild bird, to take, damage or destroy the nest of a specified³ wild bird, to take, damage or destroy the nest of any wild bird while the nest is in use or being built, or to take or destroy an egg of any wild bird⁴.

It is also an offence to have in one's possession or control any live or dead wild bird or any part of, or anything derived from, such a bird, or any egg or part of an egg of a wild bird⁵.

Intentionally or recklessly disturbing any listed wild bird⁶ while it is building a nest or is in, on or near a nest containing eggs or young, or intentionally or recklessly disturbing the dependent young of such a bird, is an offence⁷.

The term 'wild bird' does not include any bird which is shown to have been bred in captivity unless it has been lawfully released into the wild as part of a re-population or re-introduction programme⁸.

Licences to permit certain prohibited activities may be granted⁹.

1 'Wild bird' means generally under the Wildlife and Countryside Act 1981 any bird of a species which is ordinarily resident in or is a visitor to the European territory of any member state in a wild state, but does not include poultry (ie domestic fowls, geese, ducks, guinea fowls, pigeons and quails, and turkeys) or any game bird (ie pheasant, partridge, grouse or moor game, black or heath game, or ptarmigan): s 27(1) (amended by SI 2004/1487 (England); and SI 2004/1733 (Wales)). As to expert evidence that birds were wild and not bred in captivity see *Hughes v DPP* [2003] EWHC 2470 (Admin), 167 JP 589, [2003] All ER (D) 426 (Oct).

As to the comparable provision made by the Act in relation to the protection of other animals see PARA 1015 et seq.

2 As to the penalties for such offences see PARA 1013.

3 Ie a bird included in the Wildlife and Countryside Act 1981 Sch ZA1: see PARA 1003 note 1.

4 Wildlife and Countryside Act 1981 s 1(1) (amended by the Natural Environment and Rural Communities Act 2006 s 47(1), (2)). The use of the word 'intentionally' avoids the interpretation of the word 'wilfully' used in the Protection of Birds Acts 1954 to 1967 (repealed). An attempt to commit an offence relating to the protection of wild birds is also an offence, punishable in like manner: Wildlife and Countryside Act 1981 s 18; and see PARA 1013. To destroy an egg includes doing anything to it which is calculated to prevent it from hatching: s 27(1).

As to the general power of arrest, which may be exercised in respect of such offences, see the Police and Criminal Evidence Act 1984 s 24; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 924.

5 Wildlife and Countryside Act 1981 s 1(2); and see note 4. The offence is one of strict liability: *Kirkland v Robinson* (1986) 151 JP 377, DC. It is a defence to show that the bird or egg had not been killed or taken, or had been lawfully killed or taken; or that the bird, egg or other thing in the person's possession or control had been lawfully sold, whether to him or any other person: Wildlife and Countryside Act 1981 s 1(3) (amended by SI 2004/1487 (England); and SI 2004/1733 (Wales)). The onus lies on the defendant. For the purposes of the Wildlife and Countryside Act 1981 s 1(3), 'lawfully' means without any contravention of (1) Pt I (ss 1-27) and orders made under it; (2) the Protection of Birds Acts 1954 to 1967 and orders made under them; (3) any other

legislation which implements the Wild Birds Directive and which extends to any part of the United Kingdom, to any area designated in accordance with the Continental Shelf Act 1964 s 1(7), or to any area to which British fishery limits extend in accordance with the Fishery Limits Act 1976 s 1; and (4) the provisions of the law of any member state other than the United Kingdom implementing the Wild Birds Directive: Wildlife and Countryside Act 1981 s 1(3A) (added by SI 2004/1487 (England); and SI 2004/1733 (Wales); and amended by SI 2007/1843). 'Wild Birds Directive' means EEC Council Directive 79/409 (OJ L103, 25.4.79, p 1) on the conservation of wild birds: Wildlife and Countryside Act 1981 s 27(1) (definition added by SI 2007/1843).

6 le a wild bird listed in the Wildlife and Countryside Act 1981 Sch 1; see PARA 1003. Any reference in Pt I to any bird included in Sch 1 is a reference to any bird included in Pt I and, during the close season for the bird in question, any bird included in Pt II of that Schedule: s 1(7).

7 Wildlife and Countryside Act 1981 s 1(5) (amended by the Countryside and Rights of Way Act 2000 ss 81(1), 102, Sch 12 paras 1, 10, Sch 16). See also note 4.

8 Wildlife and Countryside Act 1981 s 1(6) (substituted by the Natural Environment and Rural Communities Act 2006 s 48(1)). 'Re-population' and 're-introduction' have the same meaning as in the Wild Birds Directive: Wildlife and Countryside Act 1981 s 1(6A) (added by the Natural Environment and Rural Communities Act 2006 s 48(1); and amended by SI 2007/1843).

9 See the Wildlife and Countryside Act 1981 s 16; and PARA 1006. A licence does not authorise killing or taking birds (or attempting to do so) otherwise than for the purposes for which the licence was granted: *Royal Society for the Prevention of Cruelty to Animals v Cundey* [2001] EWHC Admin 906, (2001) 166 JP 125, [2001] All ER (D) 301 (Oct).

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

994 Protection of wild birds generally

TEXT AND NOTES--As to the power of marine enforcement officers to enforce nature conservation legislation see Marine and Coastal Access Act 2009 s 237(1), (2); and **WATER AND WATERWAYS** vol 100 (2009) PARA 30F.3.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(i) Protection of Wild Birds, Nests and Eggs/995. Close seasons.

995. Close seasons.

Subject to the power of the Secretary of State or the Welsh Ministers by order made by statutory instrument to extend the periods¹, the close season for capercaillie and woodcock is from 1 February to 30 September; for snipe from 1 February to 11 August; for wild duck and wild geese in or over an area below the ordinary spring tide high water mark, from 21 February to 31 August; and for other birds from 1 February to 31 August².

¹ See under the Wildlife and Countryside Act 1981 s 2(5). At the date at which this volume states the law no such order was in force. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see **PARAS** 705-706.

² Wildlife and Countryside Act 1981 s 2(4).

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) **PARA** 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) **PARA** 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(i) Protection of Wild Birds, Nests and Eggs/996. Exceptions to general prohibition.

996. Exceptions to general prohibition.

It is no offence¹ for an authorised person² to kill or take or attempt to kill or take, or to injure during an attempt to kill, any wild bird listed in Part II of Schedule 2 to the Wildlife and Countryside Act 1981³; nor, except in a prescribed area⁴ on Sundays, is it an offence for any person to kill or take or attempt to kill or take, or to injure during an attempt to kill, a wild bird listed in Part I of Schedule 2 to that Act⁵ outside the appropriate close season⁶.

It is no offence⁷ for an authorised person to take, damage or destroy a nest in use by a wild bird listed in Part II of Schedule 2 to the Act⁸, or for such a person to take or destroy an egg of such a bird⁹.

1 ie under the Wildlife and Countryside Act 1981 s 1; see PARA 994.

2 'Authorised person' means the owner or occupier of any land on which the action takes place, or any person authorised by him, anyone authorised in writing by the local authority, any of the GB conservation bodies or certain other statutory authorities or bodies, or anyone authorised in writing by the Environment Agency, a water undertaker or a sewerage undertaker: Wildlife and Countryside Act 1981 s 27(1) (amended by the Water Act 1989 s 190(1), (3), Sch 25 para 66(1), Sch 27 Pt I; the Environmental Protection Act 1990 s 132, Sch 9 para 11(7)(a); and the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 Pt I para 76; and by virtue of SI 1996/593). 'Occupier', in relation to any land except the foreshore, includes anyone having any right of hunting, shooting, fishing or taking game or fish: Wildlife and Countryside Act 1981 s 27(1). As to a person authorised by an authorised person see *R v Gilham* (1884) 52 LT 326. As to the GB conservation bodies (ie Natural England and the Countryside Council for Wales) see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 523, 524; and as to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.

3 Wildlife and Countryside Act 1981 ss 2(2), 18(1). As to Sch 2 Pt II see PARA 1003 note 7. Note that, at the date at which this volume states the law, no birds are for the time being listed in that Part of Sch 2: see the Wildlife and Countryside Act 1981 (Variation of Schedules 2 and 3) Order 1992, SI 1992/3010.

4 'Prescribed area' means any administrative area of England and Wales prescribed by order by the Secretary of State or the Welsh Ministers for the purpose: Wildlife and Countryside Act 1981 s 2(3). The areas of the following administrative areas (constituted before the coming into force of the Local Government Act 1972) were prescribed by orders made under the Protection of Birds Act 1954 s 2(2), (5) (repealed) which it is thought now have effect as if made under the Wildlife and Countryside Act 1981 s 2(3): the counties of Caernarvon, Carmarthen, Devon, the Isle of Ely, Montgomery, Norfolk, Pembroke and York (North and West Ridings), and the county boroughs of Doncaster, Great Yarmouth and Leeds (Wild Birds (Sundays) Order 1955, SI 1955/1286); the counties of Brecknock, Cardigan, Denbigh and Merioneth (Wild Birds (Sundays) Order 1956, SI 1956/1310); the counties of Cornwall, Glamorgan and Somerset (Wild Birds (Sundays) Order 1957, SI 1957/429); and the county of Anglesey (Wild Birds (Sunday in Anglesey) Order 1963, SI 1963/1700).

As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

5 As to the Wildlife and Countryside Act 1981 Sch 2 Pt I see PARA 1003 note 6.

6 Wildlife and Countryside Act 1981 ss 2(1), (3), 18(1). As to close seasons see PARA 995. 'Close season' here includes any period of special protection specified by order made by the Secretary of State or the Welsh Ministers: s 2(6). As to such orders see PARA 999.

7 ie under the Wildlife and Countryside Act 1981 s 1; see PARA 994.

8 See note 3.

9 Wildlife and Countryside Act 1981 s 2(2).

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

996 Exceptions to general prohibition

NOTE 2--Definition of 'authorised person' in Wildlife and Countryside Act 1981 s 27(1) further amended: Marine and Coastal Access Act 2009 s 193(4), Sch 14 para 11(a) (Sch 14 para 11(a) not yet in force).

Definition of 'authorised person' in Wildlife and Countryside Act 1981 s 27(1) repealed in part: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(i) Protection of Wild Birds, Nests and Eggs/997. Creation of areas of special protection.

997. Creation of areas of special protection.

The Secretary of State or the Welsh Ministers¹ may by order provide in respect of any area specified in the order, or any part so specified, at any time or period specified, that any person who intentionally kills, injures or takes any wild bird or any specified wild bird; or takes, damages or destroys the nest of such a bird while it is in use or being built; or takes or destroys an egg of such a bird; or disturbs such a bird while it is building a nest or is in or near a nest containing eggs or young; or disturbs the dependent young of such a bird, is guilty of an offence².

Such an order may also provide that any person who, except as may be provided in the order, enters any specified area or any specified part of it either at any time or during any specified period, commits an offence³.

An authorised person⁴ commits no offence in relation to the matters mentioned above in respect of any bird included in Part II of Schedule 2 to the Wildlife and Countryside Act 1981⁵.

The Secretary of State and the Welsh Ministers are obliged, before making any such order, to give particulars either by notice in writing to every owner or occupier within the locality or, if this is in his or their opinion impracticable, by way of newspaper advertisement⁶. No order may be made unless all such persons have consented or raised no objections within three months or have withdrawn any such objections made⁷.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 Wildlife and Countryside Act 1981 s 3(1)(a). Such orders, being local in application, are not noted in this work. The Secretary of State is not entitled to take account of economic considerations: Case C-44/95 *R v Secretary of State for the Environment, ex p Royal Society for the Protection of Birds* [1997] QB 206, [1997] 2 WLR 123, [1996] ECR I-3805, ECJ. However, it would seem that he would be able to reduce the size of a special protection area on exceptional grounds, which correspond to an interest superior to that represented by the ecological objectives sought to be achieved by creating such areas: see Case C-57/89 *EC Commission v Germany* [1991] ECR I-883, ECJ. Until it is classified as a special protection area, a potential special protection area remains a proposal only: *Bown v Secretary of State for Transport* [2003] EWCA Civ 1170, [2004] 2 P & CR 90.

3 Wildlife and Countryside Act 1981 s 3(1)(b). The order may also provide that such offence is to be treated as falling within s 7(3A) (see PARA 1009): s 3(1)(c) (amended by the Countryside and Rights of Way Act 2000 s 81(1), Sch 12 para 2). As to penalties see PARA 1013. Such order does not affect any right vested in any owner, lessee or occupier: Wildlife and Countryside Act 1981 s 3(3).

4 As to the meaning of 'authorised person' see PARA 996 note 2.

5 Wildlife and Countryside Act 1981 s 3(2). See PARAS 996 note 3, 1003.

6 Wildlife and Countryside Act 1981 s 3(4) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 65(1)).

7 Wildlife and Countryside Act 1981 s 3(5).

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(i) Protection of Wild Birds, Nests and Eggs/998. Defences.

998. Defences.

Anything done in pursuance of a requirement of the Secretary of State or the Welsh Ministers in relation to the prevention of damage by pests¹, or anything done under or in pursuance of certain orders made under the Animal Health Act 1981², or except in the case of a wild bird included in Schedule ZA1 or 1 to the Wildlife and Countryside Act 1981³ or its nest or eggs, anything done in or in pursuance of an order made under any other provision of the Animal Health Act 1981⁴, is not an offence against the general provisions for the protection of wild birds, their nests and eggs⁵, nor against any order⁶ establishing an area of special protection⁷.

It is a defence for an authorised person⁸ to any charge of killing, injuring or attempting to kill a wild bird other than a bird listed in Schedule 1 to the Wildlife and Countryside Act 1981 to show⁹ that the action was necessary (1) to preserve public health or public or air safety; or (2) to prevent the spread of disease; or (3) to prevent serious damage to livestock or foodstuffs for livestock, crops, vegetables, fruit, growing timber, fisheries or inland waters¹⁰.

It is a defence to any charge of taking or attempting to take any wild bird to show that the bird had been disabled otherwise than by the defendant's act, and that it was taken or to be taken solely to tend it and release it when no longer disabled¹¹. On a charge of killing any wild bird it is a defence to show that the bird had been so seriously disabled otherwise than by the defendant's act that there was no reasonable chance of its recovering¹², and on a charge relating to any act made unlawful by the provisions referred to above¹³ to show that the act was the incidental result of a lawful operation and could not reasonably have been avoided¹⁴.

1 Ie a requirement of the Secretary of State or the Welsh Ministers under the Agriculture Act 1947 s 98; see also the Pests Act 1954 ss 1(6), 2-4; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1021 et seq. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 Ie under the Animal Health Act 1981 s 21 or s 22; see PARA 1089.

3 See PARA 1003 notes 1, 3.

4 See PARA 1040 et seq. See also PARA 1100.

5 Ie under the Wildlife and Countryside Act 1981 s 1; see PARA 994.

6 Ie under the Wildlife and Countryside Act 1981 s 3; see PARA 997.

7 Wildlife and Countryside Act 1981 s 4(1) (amended by the Natural Environment and Rural Communities Act 2006 s 47(1), (4)(a)).

8 As to the meaning of 'authorised person' see PARA 996 note 2.

9 Being on the defendant, the onus is discharged on a balance of probability: see *R v Carr-Briant* [1943] KB 607, [1943] 2 All ER 156, CCA; and *R v Dunbar* [1958] 1 QB 1, [1957] 2 All ER 737, CCA.

10 Wildlife and Countryside Act 1981 s 4(3) (amended by SI 1995/2825). See *Robinson v Whittle* [1980] 3 All ER 459, [1980] 1 WLR 1476, DC.

An authorised person must not be regarded as showing that any action of his was necessary for a purpose mentioned in head (3) in the text unless he shows that, as regards that purpose, there was no other satisfactory solution: Wildlife and Countryside Act 1981 s 4(4) (s 4(4)-(6) added by SI 1995/2825). An authorised person is not entitled to rely on the defence provided by head (3) in the text as respects any action taken at any time for any purpose mentioned there if it had become apparent, before that time, that that action would prove necessary for that purpose and either (1) a licence under the Wildlife and Countryside Act 1981 s 16 (see PARA

1006) authorising that action had not been applied for by him as soon as reasonably practicable after that fact had become apparent; or (2) an application by him for such a licence had been determined: s 4(5) (as so added). Nor is an authorised person entitled to rely on that defence as respects any action taken at any time unless he notified the Secretary of State or the Welsh Ministers as soon as reasonably practicable after that time that he had taken the action: s 4(6) (as so added).

11 Wildlife and Countryside Act 1981 s 4(2)(a).

12 Wildlife and Countryside Act 1981 s 4(2)(b).

13 See the text to notes 5-6.

14 Wildlife and Countryside Act 1981 s 4(2)(c).

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(i) Protection of Wild Birds, Nests and Eggs/999. Special protection outside close seasons.

999. Special protection outside close seasons.

If it appears to the Secretary of State or the Welsh Ministers expedient that any wild birds included in Part II of Schedule 1 or Part I of Schedule 2 to the Wildlife and Countryside Act 1981¹ should be protected outside the close season for those birds, he or they may by order with respect to the whole or any specified part of Great Britain² declare any period not exceeding 14 days as a period of special protection for them³.

Before making any such order, the Secretary of State or the Welsh Ministers must consult a person appearing to him or them to be a representative of those interested in the shooting of birds proposed to be so protected⁴.

1 See PARA 1003.

2 As to the meaning of 'Great Britain' see PARA 830 note 21.

3 Wildlife and Countryside Act 1981 s 2(6). The effect is to make any such period a part of the close season for the birds in question: s 2(6). Such orders, being of a temporary nature, are not recorded in this work. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

4 Wildlife and Countryside Act 1981 s 2(7).

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(i) Protection of Wild Birds, Nests and Eggs/1000. Prohibited methods of killing or taking wild birds.

1000. Prohibited methods of killing or taking wild birds.

Except under a licence granted under the Wildlife and Countryside Act 1981¹, it is an offence against that Act² to set in position any of the following articles, being of such a nature and so placed as to be calculated to cause bodily injury to any wild bird coming into contact with it: namely, any springe, trap, gin, snare, hook and line, any electrical device for killing, stunning or frightening, or any poisonous, poisoned or stupefying substance³.

It is similarly an offence to use, for the purpose of killing or taking any wild bird, any of those articles, whether or not of such a nature and so placed, or any net, baited board, bird-lime or similar substance⁴. The use for the purpose of killing or taking any wild bird of any bow or crossbow; any explosive other than ammunition for a firearm; any automatic or semi-automatic weapon⁵; any shotgun with internal muzzle diameter exceeding one and three-quarter inches; any target illuminating or sighting device for night shooting; any form of artificial lighting or mirror or dazzling device; any gas or smoke not already listed; or any chemical wetting agent, is an offence⁶. So also is the use of certain decoys and methods of decoy and of mechanically propelled vehicles in immediate pursuit of a wild bird⁷.

It is an offence knowingly to cause or permit to be done any of the acts described above which is not within the exceptions laid down by statute⁸.

The Secretary of State or the Welsh Ministers may by order, either generally or in relation to any specified kind of wild bird, amend the provisions stated above by adding any method of killing or taking wild birds or by omitting any such method as is mentioned⁹. This power must not be exercised, except for the purpose of complying with an international obligation, in relation to any method of killing or taking wild birds which involves the use of a firearm¹⁰.

1 le under the Wildlife and Countryside Act 1981 s 16(1); see PARA 1006.

2 Wildlife and Countryside Act 1981 s 5(1) (amended by the Countryside and Rights of Way Act 2000 ss 81(1), 102, Sch 12 para 10(6), Sch 16 Pt IV). As to penalties see PARA 1013.

3 Wildlife and Countryside Act 1981 s 5(1)(a). It is a good defence to such a charge that the article was so set by the accused for the purpose of killing or taking, in the interests of public health, agriculture, forestry, fisheries or nature conservation, any wild animals which could be lawfully killed or taken by those means and that he took all reasonable precautions to prevent injury to wild birds: s 5(4). It is also a defence to a charge under s 5(1)(a) in respect of poison to show that the act alleged to constitute the offence was done for the purpose of destroying grey squirrels or coypus in compliance with an order permitting the use of a specific poison against those animals: Agriculture (Miscellaneous Provisions) Act 1972 s 19(1), (2); Interpretation Act 1978 s 17(2)(a). As to such orders see PARA 864. See also note 8.

4 Wildlife and Countryside Act 1981 s 5(1)(b).

5 'Automatic' or 'semi-automatic' weapon does not include one the magazine of which is incapable of holding more than two rounds: Wildlife and Countryside Act 1981 s 27(1).

6 Wildlife and Countryside Act 1981 s 5(1)(c).

7 Wildlife and Countryside Act 1981 s 5(1)(d), (e). The decoys and methods referred to are any sound recording or any live bird or other animal whatever which is tethered, or which is secured by means of braces or other similar appliances, or which is blind, maimed or injured: s 5(1)(d). As to the use of decoys in cruel circumstances see PARA 1005. As to immediate pursuit see *Hawthorn v Cramb* 1960 JC 97. The clipping of a bird's feathers, having the temporary effect of rendering it flightless, does not constitute maiming within the

Wildlife and Countryside Act 1981 s 5(1)(d): *Holden v Lancashire Justices* (1998) 162 JP 789 (even though the clipping might be carried out annually).

8 Wildlife and Countryside Act 1981 s 5(1)(f) (added by the Wildlife and Countryside (Amendment) Act 1991 s 1(3)). As to the statutory exceptions and penalties see PARAS 1001, 1013. In any proceedings under the Wildlife and Countryside Act 1981 s 5(1)(f) relating to an act mentioned in s 5(1)(a) (see text and note 3) it is a defence to show that the article was set for the purpose of killing or taking wild animals which could be lawfully killed or taken by those means, in the interests of agriculture, public health, forestry, fisheries or nature conservation, and that he took or caused to be taken all reasonable precautions to prevent injury to wild birds: s 5(4A) (added by the Wildlife and Countryside (Amendment) Act 1991 s 1(4)).

9 Wildlife and Countryside Act 1981 s 5(2). At the date at which this volume states the law, no such order had been made. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

10 Wildlife and Countryside Act 1981 s 5(3).

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1000 Prohibited methods of killing or taking wild birds

TEXT AND NOTES--As to the power of marine enforcement officers to enforce nature conservation legislation see Marine and Coastal Access Act 2009 s 237(1), (2); and WATER AND WATERWAYS vol 100 (2009) PARA 30F.3.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(i) Protection of Wild Birds, Nests and Eggs/1001. Exceptions to unlawful methods of killing or taking wild birds.

1001. Exceptions to unlawful methods of killing or taking wild birds.

None of the offences relating to unlawful methods of killing or taking wild birds¹ is committed by an authorised person² who uses a cage-trap or net for the purpose of taking a wild bird listed in Part II of Schedule 2 to the Wildlife and Countryside Act 1981³; nor by any person who uses nets for the purpose of taking wild duck in a duck decoy which is shown⁴ to have been in use immediately before 4 June 1954⁵; nor by any person who uses a cage-trap or net for the purpose of taking any game bird if it is shown that the taking of the bird is solely for the purpose of breeding⁶.

Nothing in the above exceptions authorises the use of any net for taking birds in flight, or the use for taking birds on the ground of any net which is projected or propelled otherwise than by hand⁷.

1 See PARA 1000.

2 As to the meaning of 'authorised person' see PARA 996 note 2.

3 See PARAS 996 note 3, 1003.

4 The onus of proof is on the defendant; see PARA 998 note 9.

5 Ie the date of the passing of the Protection of Birds Act 1954 (repealed).

6 Wildlife and Countryside Act 1981 s 5(5)(a)-(c).

7 Wildlife and Countryside Act 1981 s 5(5).

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1001 Exceptions to unlawful methods of killing or taking wild birds

TEXT AND NOTES--As to the power of marine enforcement officers to enforce nature conservation legislation see Marine and Coastal Access Act 2009 s 237(1), (2); and WATER AND WATERWAYS vol 100 (2009) PARA 30F.3.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(i) Protection of Wild Birds, Nests and Eggs/1002. Possession of eggs of game.

1002. Possession of eggs of game.

Any person who knowingly has in his house, shop, possession or control at any time of the year the eggs of any bird of game, swan, wild duck, teal or widgeon which have been wilfully taken out of or destroyed on the nest on any land by anyone who has not the right of killing the game thereon, nor the permission of the owner of such right, is guilty of an offence¹, and is liable upon conviction before two justices to a fine not exceeding level 1 on the standard scale for every egg found in his house, shop, possession or control².

¹ Game Act 1831 s 24 (amended by the Statute Law Revision (No 2) Act 1888; and the Statute Law (Repeals) Act 1989). It is also an offence, similarly punishable, for any person not having the right of killing game on any land, nor having permission from the person having that right, wilfully to take out of the nest or destroy in the nest the eggs of any of the birds mentioned: Game Act 1831 s 24. As to game rights generally see PARA 763 et seq.

² Game Act 1831 s 24 (amended by virtue of the Criminal Law Act 1977 s 31(6); and the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 738 note 1. There is no power, however, to seize the eggs: *Stowe v Benstead* [1909] 2 KB 415, DC. A constable cannot seize eggs in the possession of a carrier under powers given by the Poaching Prevention Act 1862 s 2 (see PARA 795), and then proceed under the Game Act 1831 against the carrier and any person alleged to have induced him to steal the eggs: *Stowe v Benstead* [1909] 2 KB 415, DC.

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(i) Protection of Wild Birds, Nests and Eggs/1003. The scheduled wild birds.

1003. The scheduled wild birds.

The general effect of the Schedules to the Wildlife and Countryside Act 1981 is as follows: the nests of those wild birds listed in Schedule ZA1¹, being birds which re-use their nests, are protected at all times²; those wild birds listed in Schedule 1³, and their eggs, are protected, either at all times (Part I) or only during the appropriate close season⁴ (Part II)⁵; those wild birds listed in Schedule 2 may either be killed or taken outside the close season (Part I)⁶ or, at any time, only by authorised persons (Part II)⁷; and those wild birds listed in Part I of Schedule 3 may not be sold alive unless ringed and bred in captivity⁸.

The Secretary of State or the Welsh Ministers may, by order made by statutory instrument, and made either generally or with respect to any specified provisions of the Act, areas of Great Britain⁹ or times of the year, add any wild bird to or remove any wild bird from any of or any part of Schedules ZA1 to 3¹⁰, and any such order adding any bird to Part II of Schedule 1 or to Part I of Schedule 2 may prescribe a close season for that bird, which must commence on a date not later than 21 February and end on a date not earlier than 31 August¹¹.

1 Wildlife and Countryside Act 1981 Sch ZA1 (added by the Natural Environment and Rural Communities Act 2006 s 47(1), (3)). The birds included in that Schedule are: Golden Eagle; White-tailed Eagle; and Osprey.

Reference should be made to the up-to-date Schedule when considering any particular animal. The Schedule lists animals' scientific, ie Linnaean, names; the common names are included by way of guidance only.

2 See the Wildlife and Countryside Act 1981 s 1(aa) (added by the Natural Environment and Rural Communities Act 2006 s 47(2)).

3 Wildlife and Countryside Act 1981 Sch 1. The birds included in Part I of that Schedule (birds which are protected at all times) are: Avocet; Bee-eater; Bittern; Little Bittern; Bluethroat; Brambling; Cirl Bunting; Lapland Bunting; Snow Bunting; Honey Buzzard; Chough; Corncrake; Spotted Crake; all species of Crossbills; Stone Curlew; all species of Divers; Dotterel; Long-tailed Duck; Golden Eagle; White-tailed Eagle; Gyr Falcon; Fieldfare; Firecrest; Garganey; Black-tailed Godwit; Goshawk; Black-necked Grebe; Slavonian Grebe; Greenshank; Little Gull; Mediterranean Gull; all species of Harriers; Purple Heron; Hobby; Hoopoe; Kingfisher; Red Kite; Merlin; Golden Oriole; Osprey; Barn Owl; Snowy Owl; Peregrine; Leach's Petrel; Red-necked Phalarope; Kentish Plover; Little ringed Plover; Common Quail; Black Redstart; Redwing; Scarlet Rosefinch; Ruff; Green Sandpiper; Purple Sandpiper; Wood Sandpiper; Scaup; Common Scoter; Velvet Scoter; Serin; Shorelark; Red-backed Shrike; Spoonbill; Black-winged Stilt; Temminck's Stint; Bewick's Swan; Whooper Swan; Black Tern; Little Tern; Roseate Tern; Bearded Tit; Crested Tit; Short-toed Treecreeper; Cetti's Warbler; Dartford Warbler; Marsh Warbler; Savi's Warbler; Whimbrel; Woodlark; Wryneck.

The birds included in Pt II of that Schedule (birds which are protected during the close season) are: Goldeneye; Greylag Goose, only in the Outer Hebrides, Caithness, Sutherland and Wester Ross; Pintail.

Reference should be made to the up-to-date Schedule when considering any particular animal. The Schedule lists animals' scientific, ie Linnaean, names; the common names are included by way of guidance only.

4 As to close seasons see PARA 995.

5 See the Wildlife and Countryside Act 1981 ss 1, 4, 6, 19, 22; and PARAS 994, 998, 1007, 1010, 1026.

6 The Wildlife and Countryside Act 1981 Sch 2 Pt I lists the following wild birds, which may be killed or taken outside the close season: Capercaillie; Coot; Tufted Duck; Gadwall; Goldeneye; Canada Goose; Greylag Goose; Pink-footed Goose; White-fronted Goose (only in England and Wales); Mallard; Moorhen; Pintail; Golden Plover; Pochard; Shoveler; Common Snipe; Teal; Wigeon; Woodcock.

Reference should be made to the up-to-date Schedule when considering any particular animal. The Schedule lists animals' scientific, ie Linnaean, names; the common names are included by way of guidance only.

7 See the Wildlife and Countryside Act 1981 ss 2, 3, 22; and PARAS 995, 997, 1026. As to the meaning of 'authorised person' see PARA 996 note 2. At the date at which this volume states the law, no birds are listed in Sch 2 Pt II: Wildlife and Countryside Act 1981 (Variation of Schedules 2 and 3) Order 1992, SI 1992/3010.

8 See the Wildlife and Countryside Act 1981 s 6; and PARA 1007. The following wild birds which may not be sold alive unless ringed and bred in captivity are listed in Sch 3 Pt I: Blackbird; Brambling; Bullfinch; Reed Bunting; Chaffinch; Dunnock; Goldfinch; Greenfinch; Jackdaw; Jay; Linnet; Magpie; Barn Owl; Redpoll; Siskin; Starling; Song Thrush; Twite; Yellowhammer.

Reference should be made to the up-to-date Schedule when considering any particular animal. The Schedule lists animals' scientific, ie Linnaean, names; the common names are included by way of guidance only.

As to the sale of live or dead wild birds see PARA 1007.

9 As to the meaning of 'Great Britain' see PARA 830 note 21.

10 Wildlife and Countryside Act 1981 s 22(1) (amended by the Natural Environment and Rural Communities Act 2006 s 47(5)). For an order made under this provision see the Wildlife and Countryside Act 1981 (Variation of Schedules 2 and 3) Order 1992, SI 1992/3010. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

11 Wildlife and Countryside Act 1981 s 22(2).

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(i) Protection of Wild Birds, Nests and Eggs/1004. Shooting with lead shot.

1004. Shooting with lead shot.

No person may use lead shot¹ for the purpose of shooting with a shot gun² certain specified wild birds³. It is an offence, punishable on summary conviction with a fine not exceeding level 3 on the standard scale, to contravene this prohibition or to cause or permit another person to do so⁴. A power of entry to premises is conferred in connection with the enforcement of this provision⁵, and it is an offence to obstruct a person exercising that power⁶.

The provisions described above apply in England⁷; comparable provision is made in relation to Wales⁸.

1 'Lead shot' means any shot made of lead, or any alloy or compound of lead where lead comprises more than 1% of that alloy or compound: Environmental Protection (Restriction on Use of Lead Shot) (England) Regulations 1999, SI 1999/2170, reg 2.

2 Environmental Protection (Restriction on Use of Lead Shot) (England) Regulations 1999, SI 1999/2170, reg 3. 'Shot gun' means a smooth-bore gun but does not include any shot gun chambered for 9 millimetre or smaller rim-fire cartridges: reg 2.

3 Environmental Protection (Restriction on Use of Lead Shot) (England) Regulations 1999, SI 1999/2170, reg 3(c). 'Wild bird' means any bird of a kind which is ordinarily resident in or is a visitor to England in a wild state: reg 2. The birds so specified are: Coot (*Fulica atra*); all species of ducks, geese and swans (*Anatidae*); and Moorhen (*Gallinula chloropus*): Sch 2 (amended by SI 2002/2102).

4 Environmental Protection (Restriction on Use of Lead Shot) (England) Regulations 1999, SI 1999/2170, reg 5(1). As to the standard scale see PARA 738 note 1.

5 See the Environmental Protection (Restriction on Use of Lead Shot) (England) Regulations 1999, SI 1999/2170, reg 4.

6 See the Environmental Protection (Restriction on Use of Lead Shot) (England) Regulations 1999, SI 1999/2170, reg 5(2).

7 See the Environmental Protection (Restriction on Use of Lead Shot) (England) Regulations 1999, SI 1999/2170, reg 1(2).

8 See the Environmental Protection (Restriction on Use of Lead Shot) (Wales) Regulations 2002, SI 2002/1730.

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(i) Protection of Wild Birds, Nests and Eggs/1005. Captive birds; decoys.

1005. Captive birds; decoys.

It is an offence to promote, arrange, conduct, assist in, receive money for, or take part in, any event whatever at or in the course of which captive birds are liberated by hand or by any other means for the purpose of being shot immediately after their liberation¹.

The use of decoys for the purpose of taking or killing wild birds is also an offence².

1 See PARA 1008. As to penalties see PARA 1013.

2 See PARA 1000. As to penalties see PARA 1013.

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(ii) Licences; Sale/1006. Power to grant licences.

(ii) Licences; Sale

1006. Power to grant licences.

Licences may be granted by specified appropriate authorities¹ to permit acts which would otherwise contravene one or more of the provisions of the Wildlife and Countryside Act 1981 concerning the protection of wild birds, their nests and eggs, if done for certain specified purposes².

The specified purposes are (1) scientific or educational³; (2) ringing or marking, or examining any ring or mark on, wild birds⁴; (3) conserving wild birds⁵; (4) the re-population of an area with, or the re-introduction into an area of, wild birds, including any breeding necessary for those purposes⁶; (5) conserving flora or fauna⁷; (6) protecting any collection of wild birds⁸; (7) falconry or aviculture⁹; (8) any public exhibition or competition¹⁰; (9) taxidermy¹¹; (10) photography¹²; (11) preserving public health or public or air safety¹³; (12) preventing the spread of disease¹⁴; (13) preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, fisheries or inland waters¹⁵.

The appropriate authority must not grant a licence for any purpose mentioned above unless it is satisfied that, as regards that purpose, there is no other satisfactory solution¹⁶. Nor may an appropriate authority grant a licence for any purpose mentioned in heads (7) to (10) above otherwise than on a selective basis and in respect of a small number of birds¹⁷.

Certain specified provisions of the Act do not apply to anything done under and in accordance with the terms of a licence granted by the appropriate authority¹⁸.

Licences under the Act may be, to any degree, general or specific; may be granted either to persons of a class or to a particular person; may be subject to any specified conditions and subject to modification or revocation at any time; and are valid for the period stated in the licence¹⁹. A licence which authorises any action in respect of wild birds must specify the species of wild birds in respect of which, the circumstances in which, and the conditions subject to which, the action may be taken; must specify the methods, means or arrangements which are authorised or required for the taking of the action; and, subject to the power to modify or revoke it, is valid for the period, not exceeding two years, stated in the licence²⁰.

The making of false statements or representations to obtain the grant of a licence is an offence²¹.

The appropriate authority depends upon the nature of the licence involved and may be the Secretary of State or the Welsh Ministers or the relevant conservation body²².

1 As to the appropriate authorities see text and note 22.

2 Wildlife and Countryside Act 1981 s 16(1). The provisions concerned are s 1 (see PARA 994); s 5 (see PARAS 1000-1001); s 6(3) (see PARA 1007); s 7 (see PARA 1009); s 8 (see PARA 1008); and orders made under s 3 (see PARA 997). A licence does not authorise killing or taking birds (or attempting to do so) otherwise than for the purposes for which the licence was granted: *Royal Society for the Prevention of Cruelty to Animals v Cundey* [2001] EWHC Admin 906, (2001) 166 JP 125, [2001] All ER (D) 301 (Oct).

If the use of poison is sanctioned by the licence, it is a defence in proceedings under the Protection of Animals Act 1911 s 8(b) (as to which see PARA 864) to show that the act alleged to constitute the offence was done under the authority of such a licence and that any conditions specified in the licence were complied with: Wildlife and Countryside Act 1981 s 16(7).

Section 1 and orders under s 3 (see PARAS 994, 997) do not apply to anything done for the purpose of providing food for human consumption in relation to a gannet on the island of Sula Sgeir; or a gull's egg or, at any time before 15 April in any year, a lapwing's egg, if it is done under and in accordance with the terms of a licence granted by the appropriate authority: s 16(2). Such a licence must specify the areas and methods concerned, and must not be valid for more than two years: see s 16(6) (amended by SI 1995/2825).

3 Wildlife and Countryside Act 1981 s 16(1)(a) (substituted by SI 1995/2825).

4 Wildlife and Countryside Act 1981 s 16(1)(b).

5 Wildlife and Countryside Act 1981 s 16(1)(c). Where a trap is used under a licence, to come within this exception it is likely to be sufficient for the occupier of land to demonstrate that the trap was used for the purpose identified in the licence, and it is not necessary for him to prove that the trap had in fact conserved wild birds: see *Royal Society for the Prevention of Cruelty to Animals v Shinton* [2003] EWHC 1696 (Admin), 167 JP 512, [2003] All ER (D) 388 (Jun).

6 Wildlife and Countryside Act 1981 s 16(1)(ca) (s 16(1)(ca), (cb) added by SI 1995/2825). As to the meaning of 'repopulation' and 're-introduction' see EEC Council Directive 79/409 (OJ L103, 25.4.79, p 1) on the conservation of wild birds: Wildlife and Countryside Act 1981 s 16(9A) (added by SI 1995/2825; and amended by SI 2007/1843). See also *Royal Society for the Protection of Birds v Secretary of State for Scotland* [2000] 3 CMLR 1157, Ct of Sess; Case C-435/92 *Association pour la Protection des Aminaux Sauvages v Prefet de Maine et Loire* [1994] ECR I-67, [1994] 3 CMLR 685, ECJ.

7 Wildlife and Countryside Act 1981 s 16(1)(cb) (as added: see note 6).

8 Wildlife and Countryside Act 1981 s 16(1)(d).

9 Wildlife and Countryside Act 1981 s 16(1)(e).

10 Wildlife and Countryside Act 1981 s 16(1)(f).

11 Wildlife and Countryside Act 1981 s 16(1)(g).

12 Wildlife and Countryside Act 1981 s 16(1)(h).

13 Wildlife and Countryside Act 1981 s 16(1)(i).

14 Wildlife and Countryside Act 1981 s 16(1)(j).

15 Wildlife and Countryside Act 1981 s 16(1)(k) (amended by SI 1995/2825).

16 Wildlife and Countryside Act 1981 s 16(1A)(a) (s 16(1A) added by SI 1995/2825).

17 Wildlife and Countryside Act 1981 s 16(1A)(b) (as added: see note 16).

18 Wildlife and Countryside Act 1981 s 16(4)(a). The specified provisions are contained in s 6(1), (2); see PARA 1007.

19 Wildlife and Countryside Act 1981 s 16(5) (amended by SI 1995/2825). The authority may charge such reasonable sum as it may determine: Wildlife and Countryside Act 1981 s 16(5). For these purposes the definition of a class of persons may be framed by reference to any circumstances whatever including, in particular, their being authorised by any other person: s 16(8).

20 Wildlife and Countryside Act 1981 s 16(5A) (added by SI 1995/2825).

21 Wildlife and Countryside Act 1981 s 17. As to penalties see s 21(1), (5), (6) (as substituted and amended); see PARA 1013.

22 See the Wildlife and Countryside Act 1981 s 16(9) (s 16(9), (10) amended by the Environmental Protection Act 1990 s 132, Sch 9 para 11(4)(a); and the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 para 72(1), (3), (4); the Wildlife and Countryside Act 1981 s 16(9) also amended by SI 1995/2825), which sets out the appropriate authority in respect of licences covering the various provisions of the Wildlife and Countryside Act 1981. Provision is included for consultation involving advisory bodies such as the relevant conservation body: see s 16(9)-(11) (as so amended; s 16(11) added by the Environmental Protection Act 1990 Sch 9 para 11; and amended by the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 para 72(3)). As to the relevant conservation bodies (ie Natural England and the Countryside Council for Wales) see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 523, 524.

As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1006 Power to grant licences

TEXT AND NOTES--Wildlife and Countryside Act 1981 s 16 further amended: Marine and Coastal Access Act 2009 s 10.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(ii) Licences; Sale/1007. Sale of live or dead wild birds and their eggs.

1007. Sale of live or dead wild birds and their eggs.

Except when authorised under a licence granted by the appropriate authority¹, it is an offence for any person (1) to sell, offer or expose for sale or have in his possession, or transport for the purpose of sale, any live wild bird other than a bird included in Part I of Schedule 3 to the Wildlife and Countryside Act 1981², or an egg of a wild bird or any part of such an egg; or (2) to publish or cause to be published any advertisement likely to be understood as conveying that he buys or sells, or intends to buy or sell, any of those things³.

Similarly, except when authorised by licence, it is an offence for any person (a) to sell, offer or expose for sale or have in his possession, or transport for the purpose of sale, any dead wild bird other than a bird included in Part II or III of Schedule 3 to the Act⁴, or any part of, or anything derived from, such a wild bird; or (b) to publish or cause to be published any advertisement likely to be understood as conveying that he buys or sells, or intends to buy or sell, any of those things⁵.

Except when authorised by licence, it is an offence for any person to show, or cause or permit to be shown, for the purposes of any competition or in any premises where a competition is being held (i) any live wild bird other than one included in Part I of Schedule 3 to the Act⁶; or (ii) any live bird one of whose parents was such a wild bird⁷.

¹ See PARA 1006 text and note 22.

² See PARA 1003 note 8. A reference in the Wildlife and Countryside Act 1981 s 6 to a bird included in Sch 3 Pt I is a reference to any bird in that Part which was bred in captivity, has been ringed or marked in accordance with regulations made by the Secretary of State or the Welsh Ministers and has not been lawfully released into the wild as part of a re-population or re-introduction programme: s 6(5) (substituted by the Natural Environment and Rural Communities Act 2006 s 48(2)). 'Re-population' and 're-introduction' have the same meaning as in the Wild Birds Directive (as to which see PARA 994 note 5): Wildlife and Countryside Act 1981 s 6(5A) (s 6(5A), (5B) added by the Natural Environment and Rural Communities Act 2006 s 48(2); and amended by SI 2007/1843). Regulations made for the purposes of the Wildlife and Countryside Act 1981 s 6(5)(b) may make different provision for different birds or different provisions of s 6: s 6(5B) (as so added). See the Wildlife and Countryside (Ringling of Certain Birds) Regulations 1982, SI 1982/1220. A bird is not to be treated as bred in captivity unless its parents were lawfully in captivity when the egg was laid: Wildlife and Countryside Act 1981 s 27(2).

³ Wildlife and Countryside Act 1981 s 6(1). 'Advertisement' includes a catalogue, a circular and a price list: s 27(1). For penalties see PARA 1013. As to powers of wildlife inspectors in relation to offences under s 6 see PARAS 1011-1012.

⁴ At the date at which this volume states the law, the only bird included Sch 3 Pt II (birds which may be sold dead at all times) is the Woodpigeon: Sch 3 Pt II (amended by SI 1992/3010).

The birds included in the Wildlife and Countryside Act 1981 Sch 3 Pt III (birds which may be sold dead from 1 September to 28 February) are: Capercaillie; Coot; Tufted Duck; Mallard; Pintail; Golden Plover; Pochard; Shoveler; Common Snipe; Teal; Wigeon; Woodcock.

Any reference in s 6 to any bird included in Sch 3 Pt II or III is a reference to any bird included in Pt II and, between 1 September and 28 February following, any bird included in Pt III: s 6(6).

Reference should be made to the up-to-date Schedule when considering any particular animal. The Schedule lists animals' scientific, ie Linnaean, names; the common names are included by way of guidance only.

As to the general power of arrest, which may be exercised in respect of an offence under s 6 (in respect of a bird included in Sch 1 or any part of, or anything derived from, such a bird), see the Police and Criminal Evidence Act 1984 s 24; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 924.

5 Wildlife and Countryside Act 1981 s 6(2) (amended by the Countryside and Rights of Way Act 2000 ss 81(1), 102, Sch 12 paras 3, 10(6), Sch 16 Pt IV). For penalties see PARA 1013.

6 See PARA 1003; and note 2.

7 Wildlife and Countryside Act 1981 s 6(3). For penalties see PARA 1013.

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1007 Sale of live or dead wild birds and their eggs

TEXT AND NOTES--As to the power of marine enforcement officers to enforce nature conservation legislation see Marine and Coastal Access Act 2009 s 237(1), (2); and WATER AND WATERWAYS vol 100 (2009) PARA 30F.3.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(iii) Captive Birds/1008. Protection of captive birds.

(iii) Captive Birds

1008. Protection of captive birds.

Any person who keeps or confines any bird in any cage or other receptacle which is not sufficient in height, length and breadth to permit it to stretch its wings freely is guilty of an offence under the Wildlife and Countryside Act 1981¹.

This provision does not apply to poultry, nor to the keeping and confining of any bird while it is in the course of conveyance by whatever means, or while it is being shown for exhibition or competition purposes for a period not exceeding 72 hours, or while it is undergoing veterinary treatment².

Any person who promotes, arranges, conducts, assists in, receives money for or takes part in any event at or during which captive birds are liberated by hand or other means for the purpose of thereupon being shot, or who, as the owner or occupier of land, permits it to be used for such an event, is guilty of an offence³.

1 Wildlife and Countryside Act 1981 s 8(1) (s 8(1), (3) amended by the Countryside and Rights of Way Act 2000 ss 81(1), 102, Sch 12 para 10(6), Sch 16 Pt IV). For penalties see PARA 1013. It is suggested that 'keeping' clearly encompasses a wider class of person than the owner. Cf 'keeping an animal' for the purposes of the Animals Act 1971 s 2(1); see PARA 747. As to the protection of captive birds from cruelty see PARA 1005.

2 Wildlife and Countryside Act 1981 s 8(2).

3 Wildlife and Countryside Act 1981 s 8(3) (as amended: see note 1). As to the meaning of 'occupier' see PARA 996 note 2. 'Poultry' means domestic fowls, geese, ducks, guinea-fowls, pigeons and quails, and turkeys: s 27(1). See further, in relation to poultry, PARA 994.

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(iii) Captive Birds/1009. Registration of captive birds.

1009. Registration of captive birds.

If any person keeps or has in his possession or under his control any bird included in Schedule 4 to the Wildlife and Countryside Act 1981¹ which has not been registered and ringed or marked in accordance with regulations² made by the Secretary of State or the Welsh Ministers, he is guilty of an offence³.

If any person keeps or has in his possession or under his control any bird included in Schedule 4 to the Act either within five years of having been convicted of one of specified offences⁴ under Part I of the Act, or within three years of having been convicted of any other offence under Part I relating to the protection of birds or other animals, or any offence involving their ill-treatment, he is guilty of an offence⁵.

If any person knowingly disposes of or offers to dispose of any bird included in Schedule 4 to any person within the periods detailed above after that person's conviction for either of the above offences, he is guilty of an offence⁶.

The above-mentioned provisions do not apply to anything done for certain purposes under licence⁷.

1 The birds included in the Wildlife and Countryside Act 1981 Sch 4 are: Cirl Bunting; Lapland Bunting; Snow Bunting; Honey Buzzard; Adalbert's Eagle; Golden Eagle; Great Phillipine Eagle; Imperial Eagle; New Guinea Eagle; White-tailed Eagle; Chough; Crossbills (all species); Barbary Falcon; Gyr Falcon; Peregrine Falcon; Fieldfare; Firecrest; Madagascar Fish-Eagle; Plumbeous Forest-Falcon; Goshawk; Hen Harrier; Marsh Harrier; Montagu's Harrier; Galapagos Hawk; Grey-backed Hawk; Hawaiian Hawk; Ridgway's Hawk; White-necked Hawk; Wallace's Hawk-Eagle; Hobby; Black Honey-Buzzard; Lesser Kestrel; Mauritius Kestrel; Red Kite; Merlin; Golden Oriole; Osprey; Black Redstart; Redwing; Pallas' Sea-Eagle; Steller's Sea-Eagle; Serin; Andaman Serpent-Eagle; Madagascar Serpent-Eagle; Mountain Serpent-Eagle; Shorelark; Red-backed Shrike; New Britain Sparrowhawk; Gundlach's Sparrowhawk; Imitator Sparrowhawk; Small Sparrowhawk; Bearded Tit; Crested Tit; Cetti's Warbler; Dartford Warbler; Marsh Warbler; Savi's Warbler; Woodlark; Wryneck: Sch 4 (amended by SI 1994/1151).

Any bird one of whose parents or other lineal ancestor was a bird of a kind specified in the above list is also included: Wildlife and Countryside Act 1981 Sch 4. Reference should be made to the up-to-date Schedule when considering any particular animal. The Schedule lists animals' scientific, ie Linnaean, names; the common names are included by way of guidance only.

2 See the Wildlife and Countryside (Registration and Ringing of Certain Captive Birds) Regulations 1982, SI 1982/1221 (amended by SI 1991/478; SI 1994/1152; and SI 2004/640) (England); and the Wildlife and Countryside (Registration, Ringing and Marking of Certain Captive Birds) (Wales) Regulations 2003, SI 2003/3235, both made under the Wildlife and Countryside Act 1981 s 7(2). The obtaining of a registration by means of knowingly or recklessly making false statements or representations is an offence: s 17. For penalties see PARA 1013.

The Secretary of State and the Welsh Ministers may charge such reasonable sum (if any) as they may determine in respect of any registration effected in accordance with regulations under s 7(1): s 7(2A) (added by the Birds (Registration Charges) Act 1997 s 1(2)). The Secretary of State is to be taken to have had power to charge all sums received by him before 21 May 1996 in respect of registration in accordance with such regulations: Birds (Registration Charges) Act 1997 s 1(3). As to fees which might be charged for registration effected during the period beginning with 21 May 1996 and ending with 21 March 1997 see s 1(4). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

3 Wildlife and Countryside Act 1981 s 7(1) (amended by the Countryside and Rights of Way Act 2000 ss 81(1), 102, Sch 12 para 10(6), Sch 16 Pt IV). For penalties see PARA 1013. As to powers of wildlife inspectors in relation to offences under the Wildlife and Countryside Act 1981 s 7 see PARAS 1011-1012.

4 Ie an offence which falls within the Wildlife and Countryside Act 1981 s 7(3A): s 7(3)(a) (amended by the Countryside and Rights of Way Act 2000 s 81(1), Sch 12 para 4(1)). Those offences are (1) any offence under

the Wildlife and Countryside Act 1981 s 1(1) or (2) (see PARA 994) in respect of (a) a bird included in Sch ZA1 or 1 or any part of, or anything derived from, such a bird; (b) the nest of such a bird; or (c) an egg of such a bird or any part of such an egg; (2) any offence under s 1(5) or s 5 (both as amended) (see PARAS 994, 1000); (3) any offence under s 6 (see PARA 1007) in respect of (a) a bird included in Sch ZA1 or 1 or any part of, or anything derived from, such a bird; or (b) an egg of such a bird or any part of such an egg; (4) any offence under s 7(1); (5) any offence under s 8 (see PARA 1008); s 7(3A) (added by the Countryside and Rights of Way Act 2000 Sch 12 para 4(2)). See also PARA 997 text and note 3.

5 Wildlife and Countryside Act 1981 s 7(3) (as amended: see note 4). No account is to be taken for these purposes of any conviction which has become spent for the purposes of the Rehabilitation of Offenders Act 1974 (as to which see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 660 et seq): Wildlife and Countryside Act 1981 s 7(5). For penalties see PARA 1013.

6 Wildlife and Countryside Act 1981 s 7(4). See also note 5.

7 See the Wildlife and Countryside Act 1981 s 16(1); and PARA 1006.

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1009 Registration of captive birds

TEXT AND NOTES--As to the power of marine enforcement officers to enforce nature conservation legislation see Marine and Coastal Access Act 2009 s 237(1), (2); and **WATER AND WATERWAYS** vol 100 (2009) PARA 30F.3.

NOTE 1--Wildlife and Countryside Act 1981 Sch 4 further amended by SI 2008/2356 (England), SI 2009/780 (Wales) so as to remove all except Honey Buzzard, Golden Eagle, White-tailed Eagle, Peregrine Falcon, Goshawk, Marsh Harrier, Montagu's Harrier, Merlin, and Osprey from the list and remove the reference to a bird one of whose parents or other lineal ancestor was a bird of a kind specified in the list.

NOTE 2--SI 1982/1221 further amended: SI 2008/2357 (England). SI 2003/3235 amended: SI 2009/1733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(iv) Legal Proceedings/1010. Powers of constables and justices of the peace.

(iv) Legal Proceedings

1010. Powers of constables and justices of the peace.

If a constable suspects with reasonable cause that any person is committing or has committed an offence under Part I of the Wildlife and Countryside Act 1981, he has power without warrant to stop and search that person, search or examine any thing he is using and seize and detain any thing which may be evidence of the commission of the offence¹, and for the purpose of exercising such powers or of arresting a person for such offence, he may enter any land other than a dwelling house². A constable may, for the purpose of assisting him in exercising these powers when he has entered any premises, take with him any other person and any equipment or materials³.

In addition, if a justice of the peace is satisfied on information on oath that there are reasonable grounds for suspecting that an offence under Part I of the Act has been committed and that evidence of the offence may be found on any premises, he may grant a warrant to any constable to enter and search those premises⁴.

In certain circumstances a constable has power to take samples⁵.

1 Wildlife and Countryside Act 1981 s 19(1) (amended by the Police and Criminal Evidence Act 1984 s 119(2), (3), Sch 7 Pt I). It appears that the power to enter land is not restricted to entering for the purpose of searching, and seizing articles on, a person: *Whitelaw v Haining* 1992 SLT 956, High Ct of Justiciary. See also the Police and Criminal Evidence Act 1984 ss 25, 53(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 859 et seq.

2 Wildlife and Countryside Act 1981 s 19(2) (amended by the Police and Criminal Evidence Act 1984 s 119(1), Sch 6 para 25; the Serious Organised Crime and Police Act 2005 s 111, Sch 7 para 56; and the Natural Environment and Rural Communities Act 2006 s 52, Sch 5 Pt 1 para 2(1), (2)).

3 Wildlife and Countryside Act 1981 s 19(2A) (added by Natural Environment and Rural Communities Act 2006 Sch 5 Pt 1 para 2(3)).

4 Wildlife and Countryside Act 1981 s 19(3) (amended by the Countryside and Rights of Way Act 2000 s 81(1), Sch 12 para 7; and the Natural Environment and Rural Communities Act 2006 ss 52, 105(2), Sch 5 Pt 1 para 2(4), Sch 12). The Wildlife and Countryside Act 1981 Pt I comprises ss 1-27.

5 See the Wildlife and Countryside Act 1981 s 19XB; and PARA 1012. As to the powers of wildlife inspectors see PARA 1011.

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue)
PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(iv) Legal Proceedings/1011. Powers of wildlife inspectors.

1011. Powers of wildlife inspectors.

A wildlife inspector¹ may, at any reasonable time and (if required to do so) upon producing evidence of his authority²:

- 208 (1) enter and inspect any premises (a) for the purpose of ascertaining whether a Group 1 offence relating to wild birds³ is being, or has been, committed on those premises; or (b) for the purpose of verifying any statement or representation made, or document or information supplied, by an occupier⁴ in connection with an application for, or the holding of, a Group 1 licence⁵, or ascertaining whether any condition to which a Group 1 licence was subject has been complied with⁶;
- 209 (2) enter and inspect any premises (a) for the purpose of ascertaining whether a specified offence⁷ is being, or has been, committed on those premises; (b) where he has reasonable cause to believe that any specified birds⁸ are kept, for the purpose of ascertaining whether an offence of not registering and marking such birds⁹ is being, or has been, committed on those premises; (c) for the purpose of ascertaining whether an offence of introducing new species¹⁰ is being, or has been, committed on those premises; or (d) for the purpose of verifying any statement or representation made, or document or information supplied, by an occupier in connection with an application for, or the holding of, a Group 2 licence¹¹ or a relevant registration¹², or ascertaining whether any condition to which a Group 2 licence was subject has been complied with¹³.

Where a wildlife inspector has entered any premises for a purpose mentioned in head (1), the inspector, or a veterinary surgeon¹⁴ accompanying him, may for any such purpose, examine any specimen¹⁵ and take a sample¹⁶ from it¹⁷. No sample may be taken from a live bird, other animal or plant except for the purpose of establishing its identity or ancestry¹⁸. The inspector may require an occupier of the premises to give such assistance as is reasonable in the circumstances for the purpose of making an examination or taking a sample¹⁹. The inspector may take and remove from the premises a specimen which is not a live bird, other animal or plant, if there are reasonable grounds for believing that it is evidence of a Group 1 offence²⁰.

A wildlife inspector may, for the purpose of ascertaining whether a Group 2 offence is being, or has been, committed in respect of any specimen, require any person who has the specimen in his possession or control to make it available for examination by the inspector or a veterinary surgeon²¹. A wildlife inspector may, for the purpose of ascertaining whether a Group 2 offence is being or has been committed, require the taking of a sample from a specimen found by him in the exercise of powers in head (2) in order to determine its identity or ancestry²². A wildlife inspector may, for the purpose of ascertaining whether a Group 2 offence is being or has been committed in respect of any specimen (the 'relevant specimen'), require any person to make available for the taking of a sample any specimen (other than the relevant specimen) in that person's possession or control which is alleged to be, or which the wildlife inspector suspects with reasonable cause to be, a specimen a sample from which will tend to establish the identity or ancestry of the relevant specimen²³. Where, pursuant to a requirement under these provisions, a bird or other animal is to be examined or a sample is to be taken from a bird or other animal, a person who has the bird or animal in his possession or control must give the person making the examination or taking the sample such assistance as he may reasonably require for that purpose²⁴.

Any person who intentionally obstructs a wildlife inspector acting in the exercise of his powers²⁵, or fails without reasonable excuse to give any assistance reasonably required²⁶, or fails without reasonable excuse to make available any specimen in accordance with a requirement to do so²⁷, is guilty of an offence²⁸. Any person who, with intent to deceive, falsely pretends to be a wildlife inspector is guilty of an offence²⁹.

1 'Wildlife inspector' means a person authorised in writing by the Secretary of State or the Welsh Ministers for this purpose: Wildlife and Countryside Act 1981 s 18A(1) (ss 18A-18F added by the Natural Environment and Rural Communities Act 2006 s 52, Sch 5 Pt 1 para 1). Such an authorisation is subject to any conditions or limitations specified in it: Wildlife and Countryside Act 1981 s 18A(2) (as so added).

2 Wildlife and Countryside Act 1981 s 18A(3) (as added: see note 1).

3 'Group 1 offence' means an offence under the Wildlife and Countryside Act 1981 s 1, 5, 9(1), (2) or (4), 11, 13(1) or 14ZA: s 18B(2) (as added: see note 1). Of these, ss 1, 5 are relevant to birds: see PARAS 994, 1000. As to the other offences see PARAS 1015, 1018, 1024; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 712.

4 As to the meaning of 'occupier' see PARA 996 note 2.

5 'Group 1 licence' means a licence authorising anything which would otherwise be a Group 1 offence: Wildlife and Countryside Act 1981 s 18B(2) (as added: see note 1).

6 Wildlife and Countryside Act 1981 s 18B(1) (as added: see note 1). Nothing in s 18B confers power to enter a dwelling: s 18B(3) (as so added).

7 It is an offence under the Wildlife and Countryside Act 1981 s 6, 9(5) or 13(2). See PARAS 1007, 1015; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 712.

8 It is any birds specified in the Wildlife and Countryside Act 1981 Sch 4: see PARA 1009 note 1.

9 It is under the Wildlife and Countryside Act 1981 s 7: see PARA 1009.

10 It is under the Wildlife and Countryside Act 1981 s 14: see PARA 1024.

11 'Group 2 licence' means a licence authorising anything which would otherwise be a Group 2 offence; and 'Group 2 offence' means an offence under the Wildlife and Countryside Act 1981 s 6, 7, 9(5), 13(2) or 14: s 18D(2) (as added: see note 1).

12 'Relevant registration' means a registration in accordance with regulations under the Wildlife and Countryside Act 1981 s 7(1): s 18D(2) (as added: see note 1). See PARA 1009.

13 Wildlife and Countryside Act 1981 s 18D(1) (as added: see note 1). Heads (2)(a) and (b) in the text do not confer power to enter a dwelling except for purposes connected with a Group 2 licence or a relevant registration held by an occupier of the dwelling, or an application by an occupier of the dwelling for a Group 2 licence or a relevant registration; and head (2)(c) does not confer any power to enter a dwelling: s 18D(3) (as so added).

14 A wildlife inspector entering premises under the Wildlife and Countryside Act 1981 s 18B or 18D may take with him a veterinary surgeon if he has reasonable grounds for believing that such a person will be needed for the exercise of powers under s 18C or 18E: s 18A(4) (as added: see note 1). As to veterinary surgeons and veterinary practitioners see PARAS 1133-1134.

15 'Specimen' means any bird, other animal or plant, or any part of, or anything derived from, a bird, other animal or plant: Wildlife and Countryside Act 1981 ss 18C(3), 18E(5) (as added: see note 1).

16 'Sample' means a sample of blood, tissue or other biological material: Wildlife and Countryside Act 1981 ss 18C(4), 18E(5) (as added: see note 1).

17 Wildlife and Countryside Act 1981 s 18C(1), (2) (as added: see note 1). This is subject to ss 18C(5), 18F: see text and note 18.

18 Wildlife and Countryside Act 1981 s 18C(5) (as added: see note 1). No sample may be taken by virtue of s 18C, 18E or 19XA from a live bird or other animal except by a veterinary surgeon: s 18F(1) (as added: see note 1). No sample may be taken by virtue of s 18C, 18E or 19XA from a live bird, other animal or plant unless the person taking it is satisfied on reasonable grounds that taking the sample will not cause lasting harm to the specimen: s 18F(2) (as so added).

- 19 Wildlife and Countryside Act 1981 s 18C(6) (as added: see note 1).
- 20 Wildlife and Countryside Act 1981 s 18C(7) (as added: see note 1).
- 21 Wildlife and Countryside Act 1981 s 18E(1) (as added: see note 1). Section 18E is subject to s 18F: s 18E(6) (as so added); see note 18.
- 22 Wildlife and Countryside Act 1981 s 18E(2) (as added: see note 1).
- 23 Wildlife and Countryside Act 1981 s 18E(3) (as added: see note 1).
- 24 Wildlife and Countryside Act 1981 s 18E(4) (as added: see note 1).
- 25 Ie under the Wildlife and Countryside Act 1981 s 18B(1) or 18C(2) or (7), or 18D(1) or 18E(2).
- 26 Ie under the Wildlife and Countryside Act 1981 s 18C(6) or 18E(1) or (3).
- 27 Ie under the Wildlife and Countryside Act 1981 s 18E(1) or (3).
- 28 Wildlife and Countryside Act 1981 s 19XB(1), (2) (s 19XB added by the Natural Environment and Rural Communities Act 2006 Sch 5 Pt 1 para 3).
- 29 Wildlife and Countryside Act 1981 s 19XB(4) (as added: see note 28).

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(iv) Legal Proceedings/1012. Taking of samples by constable.

1012. Taking of samples by constable.

A constable who suspects with reasonable cause that a specimen¹ found by him² is one in respect of which an offence under Part I of the Wildlife and Countryside Act 1981³ is being or has been committed may require the taking from it of a sample⁴.

A constable who suspects with reasonable cause that an offence under Part I of the Wildlife and Countryside Act 1981 is being or has been committed in respect of any specimen (the 'relevant specimen') may require any person to make available for the taking of a sample any specimen (other than the relevant specimen) in that person's possession or control which is alleged to be, or the constable suspects with reasonable cause to be, a specimen a sample from which will tend to establish the identity or ancestry of the relevant specimen⁵.

Where a sample from a live bird or other animal is to be taken, any person who has possession or control of the specimen must give the person taking the sample such assistance as he may reasonably require for that purpose⁶.

A person is guilty of an offence if he fails without reasonable excuse to make available any specimen in accordance with a requirement⁷ to do so, or fails without reasonable excuse to give any assistance reasonably required⁸ by a constable⁹.

1 As to the meaning of 'specimen' see PARA 1011 note 15; definition applied by the Wildlife and Countryside Act 1981 s 19XA(4) (s 19XA added by the Natural Environment and Rural Communities Act 2006 s 52, Sch 5 Pt 1 para 3).

2 He in the exercise of his powers under the Wildlife and Countryside Act 1981 s 19XA.

3 He under the Wildlife and Countryside Act 1981 ss 1-27.

4 Wildlife and Countryside Act 1981 s 19XA(1) (as added: see note 1). As to the meaning of 'sample' see PARA 1011 note 16; definition applied by s 19XA(4) (as so added).

5 Wildlife and Countryside Act 1981 s 19XA(2) (as added: see note 1).

6 Wildlife and Countryside Act 1981 s 19XA(3) (as added: see note 1). Section 19XA is subject to the restrictions on taking samples from live specimens in s 18F (see PARA 1011 note 18): s 19XA(5) (as so added).

7 He under the Wildlife and Countryside Act 1981 s 19XA(2).

8 He under the Wildlife and Countryside Act 1981 s 19XA(3).

9 Wildlife and Countryside Act 1981 s 19XB(3) (s 19XB added by the Natural Environment and Rural Communities Act 2006 Sch 5 Pt 1 para 3).

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1012 Taking of samples by constable

TEXT AND NOTE 4--Wildlife and Countryside Act 1981 s 19XA(1) amended: Criminal Justice and Immigration Act 2008 Sch 26 para 7.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/(iv) Legal Proceedings/1013. Proceedings and penalties.

1013. Proceedings and penalties.

Proceedings for summary offences under Part I of the Wildlife and Countryside Act 1981¹ may be brought within six months from the date on which evidence sufficient in the prosecutor's opinion to warrant the proceedings came to his notice²; but no such proceedings may be brought more than two years after the commission of the offence³. A certificate signed by or on his behalf stating the relevant date is conclusive⁴.

A local authority⁵ may institute proceedings for any offence under Part I of the Act or any order made under it which is committed within its area⁶. For the purpose of jurisdiction, an offence is deemed to have been committed in any place where the offender is found or to which he is first brought after the commission of the offence⁷.

A person found guilty on summary conviction of an offence under Part I of the Act relating to the protection of wildlife⁸, or of obtaining a licence by a false statement or representation⁹, is liable to imprisonment for up to six months or a fine not exceeding level 5 on the standard scale, or both¹⁰.

A person guilty of an offence in relation to the introduction of new species¹¹ or to the sale of invasive non-native species¹² is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; and on conviction on indictment to imprisonment for a term not exceeding two years or to a fine, or to both¹³.

A person guilty of obstructing a wildlife inspector¹⁴, or failing to give him reasonable assistance, in connection with his powers of entry or of requiring the production of specimens, or of failing to make specimens available to, or to assist, a constable¹⁵, is liable on summary conviction to a fine not exceeding level 5 on the standard scale¹⁶. A person guilty of falsely pretending to be a wildlife inspector with intent to deceive¹⁷ is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both; or on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both¹⁸.

Where an offence was committed in respect of more than one bird, nest, egg or other thing, the maximum fine is to be determined as if the person convicted had been convicted of a separate offence in respect of each bird, nest, egg or thing¹⁹. On conviction, the court must order the forfeiture of any bird, nest, egg or other thing in respect of which the offence was committed, and may order the forfeiture of any vehicle, animal, weapon or other thing which was used to commit the offence and in the case of an offence in relation to the introduction of new species or to the sale of invasive non-native species²⁰, any animal or plant which is of the same kind as that in respect of which the offence was committed and was found in his possession²¹.

Any person who attempts to commit an offence under the provisions of Part I of the Wildlife and Countryside Act 1981 relating to the protection of wild species is guilty of an offence, punishable in like manner as for the full offence²². Any person who for the purposes of committing such an offence has in his possession anything capable of being used for committing the offence is guilty of an offence, punishable in like manner as for that offence²³.

1 le the Wildlife and Countryside Act 1981 Pt I (ss 1-27).

2 Wildlife and Countryside Act 1981 s 20(2) (amended by the Countryside and Rights of Way Act 2000 s 81(1), Sch 12 para 9(1)(b), (2); and the Natural Environment and Rural Communities Act 2006 s 53, Sch 6 para 3(1), (2)).

3 Wildlife and Countryside Act 1981 s 20(2) (as amended: see note 2).

4 Wildlife and Countryside Act 1981 s 20(3).

5 'Local authority' means in England a county, district or London borough council or the Common Council of the City of London, and in Wales a county council or county borough council: Wildlife and Countryside Act 1981 ss 27(1), 71 (definition in s 27(1) amended by the Local Government Act 1985 s 102(2), Sch 17; and the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 65, Sch 18).

6 Wildlife and Countryside Act 1981 s 25(2).

7 Wildlife and Countryside Act 1981 s 21(7).

8 Ie under the Wildlife and Countryside Act 1981 ss 1-13.

9 Ie under the Wildlife and Countryside Act 1981 s 17; see PARA 1006 text and note 21.

10 Wildlife and Countryside Act 1981 s 21(1) (substituted by the Countryside and Rights of Way Act 2000 s 81(1), Sch 12 para 10(1), (2), (6)). As to the standard scale see PARA 738 note 1.

11 Ie an offence under the Wildlife and Countryside Act 1981 s 14 (see PARA 1024).

12 Ie an offence under the Wildlife and Countryside Act 1981 s 14ZA (see PARA 1024).

13 Wildlife and Countryside Act 1981 s 21(4) (amended by the Countryside and Rights of Way Act 2000 Sch 12 para 10(1), (3)(a), (6); and the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 para 73(1)). As to the statutory maximum see PARA 877 note 6.

14 As to the meaning of 'wildlife inspector' see PARA 1011 note 1.

15 Ie guilty of an offence under the Wildlife and Countryside Act 1981 s 19XB(1), (2) or (3) (see PARAS 1011-1012), except in a case falling within s 21(4B); see note 16.

16 Wildlife and Countryside Act 1981 s 21(4AA) (added by the Natural Environment and Rural Communities Act 2006 s 52, Sch 5 Pt 1 para 5(1), (3)). However, a person guilty of an offence under s 19XB(1)(a) or (2)(a) of intentionally obstructing a wildlife inspector entering premises to ascertain whether an offence under s 14 (introduction of new species) or s 14ZA (sale of invasive non-native species) is being or has been committed is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment, to a fine: s 21(4B) (added by the Countryside and Rights of Way Act 2000 Sch 12 para 10(1), (4), (6)).

17 Ie guilty of an offence under the Wildlife and Countryside Act 1981 s 19XB(4); see PARA 1011.

18 Wildlife and Countryside Act 1981 s 21(4C) (added by the Countryside and Rights of Way Act 2000 Sch 12 para 10(1), (4), (6)).

19 Wildlife and Countryside Act 1981 s 21(5) (amended by the Countryside and Rights of Way Act 2000 Sch 12 para 10(1), (5), (6), Sch 16 Pt IV).

20 Ie an offence under the Wildlife and Countryside Act 1981 s 14 or s 14ZA. See PARA 1024.

21 Wildlife and Countryside Act 1981 s 21(6) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 73(1)). Where it is found that an offence has been committed, the court has no discretion not to order the forfeiture of the birds in respect of which an offence has been committed: see *Royal Society for the Prevention of Cruelty to Animals v Munur* [2008] EWHC 199 (Admin), 172 JP 174, [2008] All ER (D) 05 (Jan).

22 Wildlife and Countryside Act 1981 s 18(1).

23 Wildlife and Countryside Act 1981 s 18(2).

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(4) PROTECTION OF BIRDS/ (v) Administration/1014.
Administration generally.

(v) Administration

1014. Administration generally.

The powers of the Secretary of State and the Welsh Ministers to make orders under the various provisions of the Wildlife and Countryside Act 1981 have been noted specifically in the appropriate paragraphs in this title. They are assisted in administering the Act generally and in assessing the different questions arising in the protection of animals by such advisory body or bodies as they may establish, consisting of such members as they may from time to time appoint, and to which they may assign the duty to advise them on any question they may refer to them, or upon which they consider that they should offer their advice¹. The Secretary of State and the Welsh Ministers must consult with whichever of the advisory bodies they consider is best able to advise them as to the making of the particular order².

Orders are made by statutory instrument and in certain cases³ are subject to annulment in pursuance of a resolution of either House of Parliament⁴. Notice of the making of orders must be published in the London Gazette⁵.

Every local authority⁶ must take such steps as it considers expedient for bringing to the attention of the public and of schoolchildren in particular the effect of the provisions of Part I of the Act and of any order made thereunder affecting the whole or any part of its area⁷.

The GB conservation bodies⁸ may advise or assist any constable, any proper officer of a local authority, or any wildlife inspector⁹, in, or in connection with, the enforcement of the provisions of Part I of the Act or any order or regulations made under it¹⁰.

1 See the Wildlife and Countryside Act 1981 s 23.

2 Wildlife and Countryside Act 1981 s 26(4)(b). They may also give the appropriate local authorities, and any other person affected, the opportunity to submit objections or representations, and they may, if they think fit, hold a public inquiry: see s 26(4)(a), (c) (which contains exceptions to this duty in relation to orders creating special protection areas). They must consider any proposals for orders with respect to any area made to them by the local authority for that area: s 26(6).

3 Ie in the present context those made under the Wildlife and Countryside Act 1981 s 2(5) (varying the close seasons) or s 22 (varying the Schedules): s 26(2). As to the creation of areas of special protection see PARA 997.

4 Wildlife and Countryside Act 1981 s 26(1), (2). Orders under s 5 or s 11 must be laid in draft: see s 26(3). As to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

5 Wildlife and Countryside Act 1981 s 26(5).

6 As to the meaning of 'local authority' see PARA 1013 note 5.

7 Wildlife and Countryside Act 1981 s 25(1). Part I of the Act comprises ss 1-27.

8 As to the GB conservation bodies (ie Natural England and the Countryside Council for Wales) see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 523, 524.

9 As to the meaning of 'wildlife inspector' see PARA 1011 note 1.

10 Wildlife and Countryside Act 1981 s 24(4) (amended by the Countryside and Rights of Way Act 2000 s 81(1), Sch 12 para 11; and the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 para 75(1), (4)).

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (5) PROTECTION OF OTHER WILD ANIMALS/(i) In general/1015. Protection of certain wild animals.

(5) PROTECTION OF OTHER WILD ANIMALS

(i) In general

1015. Protection of certain wild animals.

The Wildlife and Countryside Act 1981 protects certain wild animals¹ by creating a number of offences². Any person who intentionally³ kills, injures or takes such an animal commits an offence⁴, as does any person who has in his possession or control any such animal, whether alive or dead, or any part of, or anything derived from, such an animal⁵. Anyone who intentionally or recklessly damages or destroys, or obstructs access to, any structure or place which such an animal uses for shelter or protection, or who disturbs any such animal while it is occupying a structure or place which it uses for that purpose, also commits an offence⁶. So, too, does any person who sells, offers or exposes for sale, or has in his possession or transports for the purpose of sale, any such animal (alive or dead), or any part of, or anything derived from, such an animal⁷; or who publishes or causes to be published any advertisement likely to be understood as conveying that he buys or sells, or intends to buy or sell, any of those things⁸.

It is a specific offence intentionally or recklessly to disturb a dolphin, a whale or a basking shark⁹.

Specific further provision is made for the protection of wild mammals¹⁰.

1 le a wild animal included in the Wildlife and Countryside Act 1981 s 9, Sch 5 (both as amended). As to the comparable provision made by the Act in relation to the protection of birds see PARA 994 et seq.

At the date at which this volume states the law, Sch 5 includes the following animals: certain sea anemones; apuses; horseshoe bats; typical bats; various species of beetles; burbots; most types of butterfly; wild cats; New Forest cicadas; Atlantic stream crayfish; crickets; damselflies; dolphins; dormice; Norfolk Aeshna dragonflies; common frogs; Couch's gobies and Giant gobies; wart-biter grasshoppers; Northern hatchet shells; marine hydroids; tentacled lagoon worms; medicinal leeches; sand lizards; viviparous lizards; most types of moth; fan mussels; freshwater pearl mussels; various species of newts; common otters; pine martens; trembling sea mats; all species of porpoises; lagoon sandworms; pink sea fans; lagoon sea slugs; allis shads; twaite shads; basking sharks; fairy and lagoon sand shrimps; slow-worms; certain snails; certain snakes; Fen Raft and ladybird spiders; red squirrels; sturgeon; common and natterjack toads; certain turtles; vendaces; water voles; walruses; whales (all species); and whitefish: Sch 5 (amended by SI 1998/288; SI 1989/906; SI 1991/367; SI 1992/2350; SI 1998/878; SI 2007/1843; SI 2008/431).

It should be noted that some species are included in the Wildlife and Countryside Act 1981 Sch 5 for the purposes of specific provisions only. Reference should be made to the up-to-date Schedule when considering any particular animal. The Schedule lists animals' scientific, ie Linnaean, names; the common names are included by way of guidance only: Sch 5 Note. For powers to vary Sch 5 see PARA 1026.

In any proceedings for an offence under s 9(1), (2) or (5)(a) (see text and notes 4-7), the animal in question is presumed to have been a wild animal unless the contrary is shown: s 9(6).

See also *R v Somerset County Council, ex p Fewings* [1995] 3 All ER 20, [1995] 1 WLR 1037, CA, where a local authority's decision to ban deer hunting, on grounds of cruelty, on certain land held by it was held not to have been reached by reference to the matters which the authority was bound to consider.

2 In relation to these offences, for exceptions see PARA 1016; as to licences see PARA 1019; as to enforcement, proceedings and penalties see PARA 1013. Nothing described in this paragraph makes unlawful anything done in pursuance of a requirement by the Secretary of State or the Welsh Ministers under the Agriculture Act 1947 s 98 (as to which see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 1021-1022), nor anything done under, or in pursuance of an order made under, the Animal Health Act 1981 (as to

which see generally PARA 1040 et seq): Wildlife and Countryside Act 1981 s 10(1). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

As to the general power of arrest, which may be exercised in respect of an offence under s 9, see the Police and Criminal Evidence Act 1984 s 24; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 924.

3 As to the meaning of 'intentionally' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 10.

4 Wildlife and Countryside Act 1981 s 9(1).

5 Wildlife and Countryside Act 1981 s 9(2). A person is not guilty of this offence if he shows that the animal had not been killed or taken, or had been killed or taken otherwise than in contravention of Pt I (ss 1-27) or the Conservation of Wild Creatures and Wild Plants Act 1975 (repealed), or if he shows that the animal or other thing in question had been sold (whether to him or any other person) otherwise than in contravention of those provisions: Wildlife and Countryside Act 1981 s 9(3).

6 Wildlife and Countryside Act 1981 s 9(4) (substituted by SI 2007/1843). This does not apply to anything done within a dwelling house: Wildlife and Countryside Act 1981 s 10(2). However, a person cannot rely on this defence as respects anything done in relation to a bat (except in the living area of a dwelling house) unless he had notified the conservation body for the area in which the house is situated or, as the case may be, the act is to take place, of the proposed action or operation and allowed it a reasonable time to advise him as to whether it should be carried out and, if so, the method to be used: s 10(5) (amended by the Environmental Protection Act 1990 s 132, Sch 9 para 11(2); and the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 para 70). As to the conservation bodies (ie Natural England and the Countryside Council for Wales) see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 523, 524.

7 Wildlife and Countryside Act 1981 s 9(5)(a). As to powers of wildlife inspectors in relation to offences under s 9(5) see PARAS 1011-1012.

8 Wildlife and Countryside Act 1981 s 9(5)(b).

9 See the Wildlife and Countryside Act 1981 s 9(4A) (added by the Countryside and Rights of Way Act 2000 Sch 12 para 5(b)).

10 See PARA 1017.

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1015 Protection of certain wild animals

TEXT AND NOTES--As to the power of marine enforcement officers to enforce nature conservation legislation see Marine and Coastal Access Act 2009 s 237(1), (2); and **WATER AND WATERWAYS** vol 100 (2009) PARA 30F.3.

NOTE 1--1981 Act Sch 5 further amended: SI 2008/2172, SI 2008/1927 (Wales).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (5) PROTECTION OF OTHER WILD ANIMALS/(i) In general/1016. Exceptions.

1016. Exceptions.

A person is not guilty of the relevant offences¹ by reason of the taking of any wild animal if he shows that the animal had been disabled otherwise than by his unlawful act and was taken solely for the purpose of tending it and releasing it when no longer disabled²; by reason of the killing of any wild animal if he shows that the animal had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering³; nor if he shows that the unlawful act was the incidental result of a lawful operation and could not reasonably have been avoided⁴.

An authorised person⁵ is not guilty of the relevant offences by reason of the killing or injuring of certain wild animals⁶ if he shows that his action was necessary for the purpose of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property, or to fisheries⁷.

1 The offences under the Wildlife and Countryside Act 1981 s 9: see PARA 1015.

2 Wildlife and Countryside Act 1981 s 10(3)(a).

3 Wildlife and Countryside Act 1981 s 10(3)(b).

4 Wildlife and Countryside Act 1981 s 10(3)(c).

5 As to the meaning of 'authorised person' see PARA 996 note 2.

6 The those wild animals included in the Wildlife and Countryside Act 1981 Sch 5; see PARA 1015.

7 Wildlife and Countryside Act 1981 s 10(4). However, he is not entitled to rely on this defence if it had become apparent, before the action was taken, that the action would prove necessary for the purposes mentioned and either a licence authorising the action (as to which see PARA 1019) had not been applied for as soon as was reasonably practicable thereafter, or an application for such a licence had been determined: s 10(6).

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (5) PROTECTION OF OTHER WILD ANIMALS/ (ii) Specific Provision relating to Wild Mammals/1017. Protection of wild mammals.

(ii) Specific Provision relating to Wild Mammals

1017. Protection of wild mammals.

It is an offence to mutilate, kick, beat, nail or otherwise impale, stab, burn, stone, crush, drown, drag or asphyxiate any wild mammal¹ with intent to inflict unnecessary suffering². However, a person is not guilty of such an offence by reason of:

- 210 (1) the attempted killing of any such wild mammal as an act of mercy if he shows that the mammal had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering³;
- 211 (2) the killing in a reasonably swift and humane manner if he shows that the wild mammal had been injured or taken in the course of either lawful shooting, hunting, coursing or pest control activity⁴;
- 212 (3) doing anything which is authorised by or under any enactment⁵;
- 213 (4) any act made unlawful as described above if the act was done by means of any snare, trap, dog, or bird lawfully used for the purpose of killing or taking any wild mammal⁶; or
- 214 (5) the lawful use of any poisonous or noxious substance on any wild mammal⁷.

Where a police constable has reasonable grounds for suspecting that a person has committed an offence and that evidence of the commission of the offence may be found on him or in or on any vehicle he has with him, the constable may, without a warrant, stop and search that person and any vehicle or article he has with him⁸. The constable may seize and detain anything which may be evidence of the commission of the offence or which may be liable to be confiscated⁹.

A person guilty of an offence under these provisions is liable on summary conviction to a fine not exceeding level 5 on the standard scale, or a term of imprisonment not exceeding six months, or both¹⁰.

¹ 'Wild mammal' means any mammal which is not a protected animal within the meaning of the Animal Welfare Act 2006 (see PARA 817 note 23): Wild Mammals (Protection) Act 1996 s 3 (substituted by the Animal Welfare Act 2006 s 64, Sch 3 para 13).

² Wild Mammals (Protection) Act 1996 s 1.

³ Wild Mammals (Protection) Act 1996 s 2(a).

⁴ Wild Mammals (Protection) Act 1996 s 2(b). For the purposes of s 2, the hunting of a wild animal with a dog within the meaning of the Hunting Act 2004 (see PARA 1033) is to be treated as lawful if and only if it is exempt hunting within the meaning of that Act (see PARAS 1034-1037): Sch 2 para 5.

⁵ Wild Mammals (Protection) Act 1996 s 2(c).

⁶ Wild Mammals (Protection) Act 1996 s 2(d). See note 4.

⁷ Wild Mammals (Protection) Act 1996 s 2(e).

⁸ Wild Mammals (Protection) Act 1996 s 4(a).

9 Wild Mammals (Protection) Act 1996 s 4(b). Any vehicle or equipment used in the commission of an offence may be confiscated by a court which has convicted a person of the offence, and the Secretary of State may, by regulations made by statutory instrument, make provision for the disposal or destruction in prescribed circumstances of such confiscated material: s 6. At the date at which this volume states the law, no such regulations had been made. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

10 Wild Mammals (Protection) Act 1996 s 5(1). Where the offence was committed in respect of more than one wild mammal, the maximum fine which may be imposed will be determined as if the person had been convicted of a separate offence in respect of each such wild mammal: s 5(2).

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (5) PROTECTION OF OTHER WILD ANIMALS/(iii) Killing and Trapping/1018. Prohibition of certain methods of killing or taking.

(iii) Killing and Trapping

1018. Prohibition of certain methods of killing or taking.

The Wildlife and Countryside Act 1981 additionally creates offences relating to certain methods of killing or taking any wild animals¹, and other offences relating to methods of killing or taking a particular group of animals.

Any person commits an offence if he sets in position a self-locking snare which is of such a nature and so placed as to be calculated to cause bodily injury to any wild animal coming into contact with it²; or if he uses for the purpose of killing or taking any wild animal any self-locking snare (whether or not of such a nature, or so placed, as stated above)³; or if he uses for that purpose any bow or crossbow, or any explosive other than ammunition for a firearm⁴; or if he uses for that purpose any live mammal or bird whatever as a decoy⁵.

It is also an offence to set in position any trap or snare, any electrical device for killing or stunning, or any poisonous, poisoned or stupefying substance, that is of such a nature and is so placed as to be calculated to cause bodily injury to certain wild animals⁶ which come into contact with it⁷; to use any such article (whether or not of such a nature, or so placed, as stated above), or any net, for the purpose of killing or taking any such animal⁸; to use for that purpose any automatic or semi-automatic weapon, any device for illuminating a target or sighting device for night shooting, any form of artificial light or any mirror or other dazzling device, or any gas or smoke⁹; to use any sound recording as a decoy for that purpose¹⁰; and to use any mechanically propelled vehicle¹¹ in immediate pursuit of such an animal for the purpose of driving, killing or taking that animal¹².

It is an offence knowingly to cause or permit to be done any of the acts described above¹³.

1 The exceptions described in PARA 1016 do not apply to these offences: cf the Wildlife and Countryside Act 1981 s 10. As to licences see PARA 1019; as to enforcement, proceedings and penalties see PARA 1013. The Secretary of State or the Welsh Ministers may amend these provisions by statutory instrument in order to comply with an international obligation: ss 11(4), 26(1). For other offences relating to poisoning animals see PARA 864; for other offences relating to traps see PARAS 1021-1022.

In any proceedings for an offence under s 11(1)(b) or (c) or (2)(b), (c), (d) or (e), and in any proceedings for an offence under s 11(1)(d) or (2)(f) relating to an act which is mentioned in any of those provisions, the animal in question is presumed to have been a wild animal unless the contrary is shown: s 11(5) (amended by the Wildlife and Countryside (Amendment) Act 1991 s 2(4)).

2 Wildlife and Countryside Act 1981 s 11(1)(a).

3 Wildlife and Countryside Act 1981 s 11(1)(b).

4 'Firearm' has the same meaning as in the Firearms Act 1968 s 57(1), (2) (as to which see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 630); Wildlife and Countryside Act 1981 s 27(1).

5 Wildlife and Countryside Act 1981 s 11(1)(c).

6 I.e a wild animal included in the Wildlife and Countryside Act 1981 Sch 6. The following animals are included: badgers; horseshoe bats (all species); typical bats (all species); wild cats; bottle-nosed and common dolphins; dormice (all species); hedgehogs; pine martens; common otters; polecats; harbour porpoises; shrews (all species); red squirrels: Sch 6. Reference should be made to the up-to-date Schedule when considering any particular animal. It should be noted that the Schedule lists animals' scientific, i.e. Linnaean, names. The common names are included by way of guidance only: Sch 6 Note. For powers to vary Sch 6 see PARA 1026.

7 Wildlife and Countryside Act 1981 s 11(2)(a). It is a defence to show that the article was set in position by the accused for the purpose of killing or taking, in the interests of public health, agriculture, forestry, fisheries or nature conservation, any wild animals which could be lawfully killed or taken by those means and that he took all reasonable precautions to prevent injury thereby to any wild animals included in Sch 6 (see note 6): s 11(6).

8 Wildlife and Countryside Act 1981 s 11(2)(b).

9 Wildlife and Countryside Act 1981 s 11(2)(c).

10 Wildlife and Countryside Act 1981 s 11(2)(d).

11 'Vehicle' includes aircraft, hovercraft and boat: Wildlife and Countryside Act 1981 s 27(1).

12 Wildlife and Countryside Act 1981 s 11(2)(e).

13 Wildlife and Countryside Act 1981 s 11(1)(d), (2)(f) (added by the Wildlife and Countryside (Amendment) Act 1991 s 2(1), (2)(b), (3)(b) respectively). In any proceedings for an offence under the Wildlife and Countryside Act 1981 s 11(2)(f) relating to an act mentioned in s 11(2)(a) (see text and note 7), a defence similar to that described in note 7 is available: s 11(7) (added by the Wildlife and Countryside (Amendment) Act 1991 s 2(6)).

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1018 Prohibition of certain methods of killing or taking

TEXT AND NOTES--As to the power of marine enforcement officers to enforce nature conservation legislation see Marine and Coastal Access Act 2009 s 237(1), (2); and WATER AND WATERWAYS vol 100 (2009) PARA 30F.3.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (5) PROTECTION OF OTHER WILD ANIMALS/(iii) Killing and Trapping/1019. Licences.

1019. Licences.

The offences described above in relation to protection of wild animals generally¹ do not apply to anything done under and in accordance with the terms of a licence² granted by the appropriate authority³ for, generally⁴, certain specified purposes⁵.

A person who in order to obtain a licence makes a statement or representation, or furnishes a document or information, which he knows to be false in a material particular, or who recklessly⁶ makes a statement or representation, or furnishes a document or information, which is false in a material particular, commits an offence⁷.

1 See PARAS 1015, 1018. Note that the provisions described in this paragraph do not apply to the Wild Mammals (Protection) Act 1996; as to which see PARA 1017.

2 Such a licence may be, to any degree, general or specific; may be granted either to persons of a class or to a particular person; may be subject to compliance with any specified conditions; and may be modified or revoked at any time by the appropriate authority (as to which see note 3): Wildlife and Countryside Act 1981 s 16(5) (amended by SI 1995/2825). The authority may charge such reasonable sum as it may determine: Wildlife and Countryside Act 1981 s 16(5). For these purposes the definition of a class of persons may be framed by reference to any circumstances whatever including, in particular, their being authorised by any other person: s 16(8).

A licence authorising the killing of wild animals must specify the area within which, and the methods by which, the animals may be killed, and it must not be valid for more than two years: s 16(6) (amended by SI 1995/2825). If the use of poison is sanctioned by the licence, it is a defence in proceedings under the Protection of Animals Act 1911 s 8(b) (as to which see PARA 864) to show that the act alleged to constitute the offence was done under the authority of such a licence and that any conditions specified in the licence were complied with: Wildlife and Countryside Act 1981 s 16(7).

3 Wildlife and Countryside Act 1981 s 16(3), (4) (s 16(3) amended by the Countryside and Rights of Way Act 2000 s 81(1), Sch 12 para 6; the Wildlife and Countryside Act 1981 s 16(4) amended by the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 para 72(1), (2)). The 'appropriate authority' is as follows: for heads (1) to (5) in note 5, the relevant conservation body; for heads (6) to (8), the Secretary of State or the Welsh Ministers (who must from time to time consult with the relevant conservation body as to the exercise of this function, and may not grant a licence unless he has or they have been advised by the body as to the circumstances in which, in its opinion, such licences should be granted); for the activities otherwise prohibited by s 9(5) (see note 2), the Secretary of State or the Welsh Ministers, after consulting with an advisory body: see the Wildlife and Countryside Act 1981 s 16(9), (10), (11) (all amended by the Environmental Protection Act 1990 s 132, Sch 9 para 11(4); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 72; the Wildlife and Countryside Act 1981 s 16(9) also amended by SI 1995/2825). As to advisory bodies see PARA 1014. As to the conservation bodies (ie Natural England and the Countryside Council for Wales) see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 523, 524.

4 A purpose need not be specified in a licence making lawful what would otherwise be an offence under the Wildlife and Countryside Act 1981 s 9(5) (see PARA 1015 text and notes 7-8): see s 16(4).

5 These are: (1) scientific or educational purposes; (2) ringing or marking, or examining any ring or mark on, wild animals; (3) conserving wild animals or introducing them to particular areas; (4) protecting any zoological or botanical collection; (5) photography; (6) preserving public health or public safety; (7) preventing the spread of disease; and (8) preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property, or to fisheries: Wildlife and Countryside Act 1981 s 16(3) (as amended: see note 3).

6 As to recklessness see PARA 740 note 8; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 11.

7 Wildlife and Countryside Act 1981 s 17. As to enforcement, proceedings and penalties see PARA 1013.

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1019 Licences

NOTES 2-5--Wildlife and Countryside Act 1981 s 16 further amended: Marine and Coastal Access Act 2009 s 10.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (5) PROTECTION OF OTHER WILD ANIMALS/(iii) Killing and Trapping/1020. Snares.

1020. Snares.

It is an offence to set in position, or knowingly cause or permit to be set in position, any snare which is of such a nature and so placed as to be calculated to cause bodily injury to any wild animal coming into contact with it, and while the snare remains in position to fail, without reasonable excuse, to inspect it or cause it to be inspected at least once every day¹.

¹ Wildlife and Countryside Act 1981 s 11(3) (amended by the Wildlife and Countryside (Amendment) Act 1991 s 2(1), (4)). Licences are not available: cf the Wildlife and Countryside Act 1981 s 16. As to enforcement, proceedings and penalties see PARA 1013. See also PARA 1018 for other offences connected with snares.

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1020 Snares

TEXT AND NOTES--As to the power of marine enforcement officers to enforce nature conservation legislation see Marine and Coastal Access Act 2009 s 237(1), (2); and **WATER AND WATERWAYS** vol 100 (2009) PARA 30F.3.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (5) PROTECTION OF OTHER WILD ANIMALS/(iii) Killing and Trapping/1021. Restriction on types of spring trap; inspection.

1021. Restriction on types of spring trap; inspection.

It is an offence for the purpose of killing or taking animals¹ to use or knowingly² permit the use of any spring trap other than an approved trap³, or to use or knowingly permit the use of an approved trap in circumstances for which it is not approved⁴. It is also an offence to sell or expose or offer for sale any spring trap other than an approved trap with a view to its being used unlawfully as above⁵, or to have any spring trap in one's possession for such an unlawful purpose⁶. On summary conviction these offences carry a penalty of a fine not exceeding level 3 on the standard scale⁷.

Failure to inspect or to cause some competent person to inspect, at least once every day between sunrise and sunset, any spring trap set, or caused or procured to be set, for the purpose of catching any hare or rabbit, or placed so as to be likely to catch any hare or rabbit, is an offence punishable on summary conviction with a fine not exceeding level 1 on the standard scale⁸.

1 'Animals' is not defined. Cf PARAS 817 note 23, 1041.

2 As to the meaning of 'knowingly' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 8.

3 I.e. a trap approved by order made by statutory instrument, either generally or for certain animals or for use in certain circumstances: see the Pests Act 1954 s 8(3), (8). The Spring Traps Approval Order 1995, SI 1995/2427, has been made under this power. The Pests Act 1954 s 8(1) does not apply to traps of any description specified by order, made by statutory instrument, as being solely for the destruction of rats, mice or other small ground vermin: s 8(5). The Small Ground Vermin Traps Order 1958, SI 1958/24, has been made under this power.

4 Pests Act 1954 s 8(1)(a). This prohibition does not extend to the experimental use of a spring trap under licence or the authority of the Secretary of State or the Welsh Ministers: s 8(4). See also, as to snares and other methods of trapping, PARAS 1018, 1020. As to leghold traps see PARA 1023. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

5 Pests Act 1954 s 8(1)(b).

6 Pests Act 1954 s 8(1)(c).

7 Pests Act 1954 s 8(2) (amended by virtue of the Criminal Justice Act 1982 ss 35, 46). As to the standard scale see PARA 738 note 1.

8 Protection of Animals Act 1911 s 10 (amended by virtue of the Criminal Justice Act 1982 s 46). Traps of this nature are prohibited, except in rabbit holes, by the Pests Act 1954 s 9: see PARA 1022. For a similar offence see PARA 1020.

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory

Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1021 Restriction on types of spring trap; inspection

NOTE 3--SI 1995/2427 amended: SI 2009/2166.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (5) PROTECTION OF OTHER WILD ANIMALS/(iii) Killing and Trapping/1022. Open trapping of hares and rabbits.

1022. Open trapping of hares and rabbits.

A person who for the purpose of killing or taking hares or rabbits uses or knowingly¹ permits the use of a spring trap² elsewhere than in a rabbit hole³ is guilty of an offence⁴ unless the trap is used in circumstances and subject to conditions prescribed by regulations made by statutory instrument by the Secretary of State or the Welsh Ministers or under and in accordance with a licence granted by them⁵. An offender is liable on summary conviction to a fine not exceeding level 3 on the standard scale⁶.

1 As to the meaning of 'knowingly' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 8.

2 See PARA 1021.

3 I.e. that part of the burrow which is inside the ground and covered by a roof and not the ground which is scraped away outside: *Brown v Thompson* (1882) 9 R 1183. It does not mean a hole scooped out under a wire fence with no roof of soil: *Fraser v Lawson* (1882) 10 R 396.

4 Pests Act 1954 s 9(1).

5 Pests Act 1954 s 9(3), (4). At the date at which this volume states the law, no such regulations had been made. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

6 Pests Act 1954 s 9(2) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see PARA 738 note 1.

UPDATE

994-1022 Protection of wild birds generally ... Open trapping of hares and rabbits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (5) PROTECTION OF OTHER WILD ANIMALS/(iii) Killing and Trapping/1023. Leghold traps.

1023. Leghold traps.

The use of leghold traps¹ in the European Community is prohibited². The importation into the Community of pelts and other goods deriving from animals of certain species³, unless they are imported from countries where humane trapping methods are being developed, or there are prohibitions on the use of leghold traps, is also prohibited⁴.

1 'Leghold trap' means a device designed to restrain or capture an animal by means of jaws which close tightly upon one or more of the animal's limbs, thereby preventing withdrawal of the limb or limbs from the trap: EC Council Reg 3254/91 (OJ L308, 9.11.91, p 1) prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards, art 1.

2 EC Council Reg 3254/91 (OJ L308, 9.11.91, p 1) art 2.

3 The species referred to are beaver, otter, coyote, wolf, lynx, bobcat, sable, raccoon, musk rat, fisher, badger, marten and ermine: EC Council Reg 3254/91 (OJ L308, 9.11.91, p 1) Annex I. See Annex II for the goods specified.

4 See EC Council Reg 3254/91 (OJ L308, 9.11.91, p 1) art 2; and EC Commission Regulation 35/97 (OJ L8, 11.1.97, p 2) laying down provisions on the certification of pelts and goods covered by EC Council Regulation 3254/91.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (5) PROTECTION OF OTHER WILD ANIMALS/(iv) Introduction of New Species/1024. Introduction of new species.

(iv) Introduction of New Species

1024. Introduction of new species.

If any person releases or allows to escape into the wild any animal which is of a kind which is not ordinarily resident in and is not a regular visitor to Great Britain¹ in a wild state, or is included in Part I of Schedule 9 to the Wildlife and Countryside Act 1981², he is guilty of an offence³. It is a defence to prove that the accused took all reasonable steps and exercised all due diligence to avoid committing the offence⁴.

A person is guilty of an offence if he sells, offers or exposes for sale, or has in his possession or transports for the purposes of sale a specified animal or plant⁵ or anything from which such an animal or plant can be reproduced or propagated⁶. A person is also guilty of an offence if he publishes or causes to be published any advertisement likely to be understood as conveying that he buys or sells, or intends to buy or sell any such animal or plant or anything from which such an animal or plant can be reproduced or propagated⁷. The defence of due diligence applies to these offences⁸.

The Secretary of State or the Welsh Ministers may issue or approve a code of practice relating to (1) animals which are not ordinarily resident in and are not regular visitors to Great Britain in a wild state; (2) animals or plants included in Schedule 9 to the Wildlife and Countryside Act 1981; or (3) any description of animals or plants mentioned in head (1) or (2)⁹. The Secretary of State or the Welsh Ministers must ensure that a code is published in a way that is appropriate for bringing it to the attention of persons likely to be affected by it¹⁰. A person's failure to comply with a provision of a code does not make him liable to criminal or civil proceedings¹¹; but a code is admissible in evidence in any proceedings, and must be taken into account by a court in any case in which it appears to the court to be relevant¹².

1 As to the meaning of 'Great Britain' see PARA 830 note 21.

2 The animals so included are: Large-mouthed Black Bass; Rock Bass; Bitterling; Budgerigar; Capercaillie; Coypu; Noble Crayfish; Signal Crayfish; Turkish Crayfish; Deer, any hybrid one of whose parents or other lineal ancestor was a Sika Deer; Muntjac Deer; Sika Deer; Fat Dormouse; Carolina Wood Duck; Mandarin Duck; Ruddy Duck; White-tailed Eagle; New Zealand Flatworm; Edible Frog; European Tree Frog (otherwise known as Common tree frog); Marsh Frog; Mongolian Gerbil; Canada Goose; Egyptian Goose; Night Heron; Common Wall Lizard; Prairie Marmot (otherwise known as Prairie Dog); American Mink; Alpine Newt; Italian Crested Newt; Barn Owl; Ring-necked Parakeet; Chukar Partridge; Rock Partridge; Golden Pheasant; Lady Amherst's Pheasant; Reeves' Pheasant; Silver Pheasant; Crested Porcupine; Himalayan Porcupine; Pumpkinseed (otherwise known as Sun-fish or Pond-Perch); Bobwhite Quail; Black Rat; Aesculapian Snake; Grey Squirrel; European Pond Terrapin; African Clawed Toad; Midwife Toad; Yellow-bellied Toad; Red-necked Wallaby; Wels (otherwise known as European catfish); Zander: Wildlife and Countryside Act 1981 Sch 9 Pt I (amended by SI 1992/320; SI 1992/2674; SI 1997/226; and SI 1999/1002).

Reference should be made to the up-to-date Schedule when considering any particular animal. The Schedule lists animals' scientific, ie Linnaean, names; the common names are included by way of guidance only.

3 Wildlife and Countryside Act 1981 s 14(1), which is expressed to be subject to the other provisions of Pt I (ss 1-27).

For the penalty for this offence see PARA 1013. As to the powers of constables and wildlife inspectors in relation to this offence see PARAS 1010-1012.

4 Wildlife and Countryside Act 1981 s 14(3). However, where this defence involves an allegation that the commission of the offence was due to the act or default of another person, the person charged is not, without

leave of the court, entitled to rely on the defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice giving such information identifying or assisting in the identification of the other person as was then in his possession: s 14(4).

5 le an animal or plant which (1) is within the Wildlife and Countryside Act 1981 s 14(1) or (2); (2) is of a description prescribed for the purposes of s 14ZA by an order made by the Secretary of State or the Welsh Ministers; and (3) is a live animal or live plant: s 14ZA(3) (s 14ZA added by the Natural Environment and Rural Communities Act 2006 s 50). Such an order may be made in relation to a particular area or a particular time of the year: Wildlife and Countryside Act 1981 s 14ZA(4) (as so added). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

6 Wildlife and Countryside Act 1981 s 14ZA(1) (as added: see note 5).

7 Wildlife and Countryside Act 1981 s 14ZA(2) (as added: see note 5).

For the penalty for these offences see PARA 1013. As to the powers of constables and wildlife inspectors in relation to these offences see PARAS 1010-1012.

8 Wildlife and Countryside Act 1981 s 14ZA(5) (as added: see note 5). As to the defence see text and note 4.

9 Wildlife and Countryside Act 1981 s 14ZB(1) (s 14ZB added by the Natural Environment and Rural Communities Act 2006 s 51). The Secretary of State or the Welsh Ministers may revise or replace a code or approve its revision or replacement: Wildlife and Countryside Act 1981 s 14ZB(2) (as so added).

10 Wildlife and Countryside Act 1981 s 14ZB(3) (as added: see note 9).

11 Wildlife and Countryside Act 1981 s 14ZB(4) (as added: see note 9).

12 Wildlife and Countryside Act 1981 s 14ZB(5) (as added: see note 9).

UPDATE

1024-1027 Introduction of new species ... Duties of local authorities

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

1024 Introduction of new species

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTES 1-8--As to the power of marine enforcement officers to enforce nature conservation legislation see Marine and Coastal Access Act 2009 s 237(1), (2); and **WATER AND WATERWAYS** vol 100 (2009) PARA 30F.3.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (5) PROTECTION OF OTHER WILD ANIMALS/(v) Administration and Enforcement under the Wildlife and Countryside Act 1981/1025. Enforcement, proceedings and penalties.

(v) Administration and Enforcement under the Wildlife and Countryside Act 1981

1025. Enforcement, proceedings and penalties.

The provisions of Part I of the Wildlife and Countryside Act 1981 relating to enforcement, proceedings and penalties, previously described in relation to the protection of birds¹, apply also to the protection of other wild animals under that Part of the Act².

1 See PARA 1010 et seq.

2 See PARAS 1015-1016, 1018-1024. Note, however, that the Wild Mammals (Protection) Act 1996 makes its own provision as to enforcement: see PARA 1017.

UPDATE

1024-1027 Introduction of new species ... Duties of local authorities

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (5) PROTECTION OF OTHER WILD ANIMALS/(v) Administration and Enforcement under the Wildlife and Countryside Act 1981/1026. Power to make orders.

1026. Power to make orders.

The Secretary of State or the Welsh Ministers may by statutory instrument vary the list of animals protected by the Wildlife and Countryside Act 1981¹.

¹ They may vary the Wildlife and Countryside Act 1981 Sch 5 on representations being made by the GB conservation bodies acting through the Joint Nature Conservation Committee, or for the purpose of complying with an international obligation: s 22(3), (3A), (4) (s 22(3) amended by the Environmental Protection Act 1990 s 132, Sch 9 para 11; and the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 para 74(1), (2), Sch 12; the Wildlife and Countryside Act 1981 s 22(3A) added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 74(3)). In the latter case the Secretary of State or the Welsh Ministers must consult an appropriate advisory body (as to which see PARA 1014), and in both cases must give affected parties an opportunity to submit objections or representations: see ss 23, 26; and PARA 1014 for further details of the consultation required. The GB conservation bodies acting through the Joint Nature Conservation Committee may at any time, and must on every fifth anniversary of the passing of the Act (from 30 October 1991), review Sch 5 and advise the Secretary of State or the Welsh Ministers accordingly: see s 24(1), (1A), (2), (3) (s 24(1), (2), (3) amended by the Environmental Protection Act 1990 Sch 9 para 11; Wildlife and Countryside Act 1981 s 24(1) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 75(1), (2), Sch 12; Wildlife and Countryside Act 1981 s 24(1A) added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 75(3)). As to the Wildlife and Countryside Act 1981 Sch 5, and the orders which have been made varying it, see PARA 1015 note 1.

The Secretary of State or the Welsh Ministers may also vary the list of animals included in Sch 6, but only in order to comply with an international obligation and after similar consultation: see s 22(4). As to Sch 6 see PARA 1018 note 6.

The Secretary of State or the Welsh Ministers may also vary the list of animals included in Sch 9. As to Sch 9, and the orders which have been made varying it, see PARA 1024 note 2.

As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706. As to the GB conservation bodies (ie Natural England and the Countryside Council for Wales) see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 523, 524. The Joint Nature Conservation Committee is constituted under the Natural Environment and Rural Communities Act 2006 Pt 2 (ss 31-39), Sch 4: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 525.

UPDATE

1024-1027 Introduction of new species ... Duties of local authorities

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

1026 Power to make orders

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (5) PROTECTION OF OTHER WILD ANIMALS/(v) Administration and Enforcement under the Wildlife and Countryside Act 1981/1027. Duties of local authorities.

1027. Duties of local authorities.

Every local authority¹ must take such steps as it considers expedient for bringing to the attention of the public, and of schoolchildren in particular, the effect of the provisions of Part I of the Wildlife and Countryside Act 1981 and of any order made thereunder affecting the whole or part of its area².

1 As to the meaning of 'local authority' see PARA 1013 note 5.

2 See PARA 1014 text and notes 6-7.

UPDATE

1024-1027 Introduction of new species ... Duties of local authorities

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/ (5) PROTECTION OF OTHER WILD ANIMALS/(vi) Whales and Seals/1028. Conservation of whales and seals.

(vi) Whales and Seals

1028. Conservation of whales and seals.

Provision is made to give effect to various international obligations concerning the protection of whales and seals, and to afford such protection within the United Kingdom. The legislation providing such protection is considered elsewhere in this work¹.

¹ See eg the Conservation of Seals Act 1970; the Whaling Industry (Regulation) Acts 1934 and 1938 (ie the Whaling Industry (Regulation) Act 1934 and the Sea Fish Industry Act 1938 Pt III (ss 43-46)); and **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1070 et seq.

UPDATE

1028-1031 Conservation of whales and seals ... Destructive imported animals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(6) KEEPING DANGEROUS WILD ANIMALS/1029. Keeping dangerous wild animals: general.

(6) KEEPING DANGEROUS WILD ANIMALS

1029. Keeping dangerous wild animals: general.

Generally¹, no person may keep any dangerous wild animal², except under the authority of a licence granted by a local authority³. The authority may authorise a veterinary surgeon or veterinary practitioner to inspect any premises where any such animal is being held or where it is proposed to hold any such animal⁴. A licence must not be granted unless such an inspection has been made and a report on the premises considered by the authority⁵. Where any such animal is being kept without a licence, or where any condition of a licence is contravened or not complied with, the authority may seize the animal and retain it, destroy it or otherwise dispose of it, and is not liable to pay compensation⁶. Any person who keeps a dangerous wild animal without a licence, and any person who wilfully obstructs or delays any person entering or inspecting premises⁷, commits an offence⁸; if any condition of a licence is contravened or not complied with, an offence is committed by both the person to whom the licence is granted and any other person who is entitled to keep any animal under the authority of the licence and who was primarily responsible for the contravention or failure to comply⁹.

1 Exceptions apply to licensed zoos (see PARA 944), circuses, licensed pet shops (see PARA 936), and designated establishments under the Animals (Scientific Procedures) Act 1986 (see PARA 880): Dangerous Wild Animals Act 1976 s 5 (amended by the Zoo Licensing Act 1981 s 22(1)(a); and the Animals (Scientific Procedures) Act 1986 s 27(2), Sch 3 para 10). For these purposes an animal is treated as kept in a zoo when it is elsewhere in the personal possession of the operator of the zoo, or of competent persons acting on his behalf: Zoo Licensing Act 1981 s 22(2). 'Circus' includes any place where animals are kept or introduced wholly or mainly for the purpose of performing tricks or manoeuvres: Dangerous Wild Animals Act 1976 s 7(4). 'Circus' includes those lodgings in which animals are kept over the winter period, so no licence under the Act is required to cover winter lodgings: *South Kesteven District Council v Mackie* [2000] 1 All ER 497, [2000] 1 WLR 1461, CA. See also *Hemming v Graham-Jones* (1980) Times, 23 October, DC (a circus is the aggregation of vans and cages in which wild animals may be kept and a big top and ring into which they may well be introduced for the purpose of performing), considered in *South Kesteven District Council v Mackie* [2000] 1 All ER 497, [2000] 1 WLR 1461, CA.

2 I.e. any animal of a kind for the time being specified in the Dangerous Wild Animals Act 1976 Schedule: s 7(4). The kinds of animal so specified include most species of non-domesticated cattle, goats, sheep and pigs, wild dogs and horses, marsupials, monkeys, leaping lemurs, apes, armadillos, anteaters, pandas, badgers, civets, walruses, seals and sealions, aardvarks, antelopes, certain members of the cat family, gazelles, camels, crocodiles and alligators, dangerous snakes, dangerous spiders, giraffes, hippopotami, hyaenas, elephants, rhinoceri, ostriches, tapirs, bears, cassowaries, pronghorns and scorpions: see Schedule (substituted by SI 1984/1111; further substituted by SI 2007/2465). Reference to the Schedule to the Dangerous Wild Animals Act 1976 should be made for the status of any specific species. The Schedule classifies species by their scientific, i.e. Linnaean, names, and their common names are included by way of guidance only: see s 7(5). The Schedule may be modified by the Home Secretary by way of statutory instrument: s 8, under which the Dangerous Wild Animals Act 1976 (Modifications) Order 1984, SI 1984/1111, and the Dangerous Wild Animals Act 1976 (Modification) (No 2) Order 2007, SI 2007/2465, were made.

3 Dangerous Wild Animals Act 1976 s 1(1). 'Local authority' means, in relation to England, a district council, London borough council or the Common Council of the City of London, and in relation to Wales, a county council or county borough council: s 7(4) (definition amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 51, Sch 18). As to the criteria for granting such licences see PARA 1030.

4 See the Dangerous Wild Animals Act 1976 s 3(1), (2). The reasonable costs of the inspection may be recovered from the licence holder (or applicant for a licence): s 3(3). As to veterinary surgeons and veterinary practitioners see PARAS 1133-1134.

5 See the Dangerous Wild Animals Act 1976 s 1(5).

6 Dangerous Wild Animals Act 1976 s 4(1). Expenditure incurred by the authority may be recovered from the keeper or licence holder, as applicable: see s 4(2), (3).

7 le those authorised by the local authority to inspect: see text to note 4.

8 Dangerous Wild Animals Act 1976 ss 2(5), 3(4). Persons guilty of any offence under that Act are liable on summary conviction to a maximum fine of level 5 on the standard scale: s 6(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 738 note 1. Further, where a person is convicted of any offence under the Protection of Animals Act 1911 (see PARAS 817, 864, 1021), the Pet Animals Act 1951 (see PARA 936 et seq), the Animal Boarding Establishments Act 1963 (see PARA 938), the Riding Establishments Acts 1964 and 1970 (see PARA 940 et seq), the Breeding of Dogs Act 1973 (see PARA 931 et seq) or the Dangerous Wild Animals Act 1976, or of an offence under any of the Animal Welfare Act 2006 s 4, 5, 6(1), (2), 7-9 or 11 (see PARAS 826-832), the convicting court may cancel any licence held by him under the Dangerous Wild Animals Act 1976 and may also disqualify him from keeping any dangerous wild animal for such period as the court thinks fit: see s 6(2) (amended by the Animal Welfare Act 2006 s 64, Sch 3 para 9). Such cancellation or disqualification may be suspended pending an appeal: Dangerous Wild Animals Act 1976 s 6(3).

9 Dangerous Wild Animals Act 1976 s 2(6). It is a defence for the person charged under s 2(6) to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence: s 2(7). For the court's powers on conviction see note 8.

UPDATE

1028-1031 Conservation of whales and seals ... Destructive imported animals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(6) KEEPING DANGEROUS WILD ANIMALS/1030. Licences for keeping dangerous wild animals.

1030. Licences for keeping dangerous wild animals.

An application for a licence for keeping dangerous wild animals must specify the species of animal and the number of animals of each species proposed to be kept and the premises where they are to be held¹. The applicant must normally be the person who both owns and possesses the animal or animals, or who proposes to do so². No-one under 18, nor anyone disqualified from keeping a dangerous wild animal, may apply for a licence³. The local authority must not grant a licence unless it is satisfied that it is not contrary to the public interest to do so; that the applicant is a suitable person to hold a licence; that any animal concerned will be kept in secure and suitable accommodation, supplied with adequate and suitable food, drink and bedding, and visited at suitable intervals; that the animal will have room to exercise; that appropriate steps will be taken for the protection of the animal in case of fire or other emergency; and that all reasonable precautions will be taken to prevent and control the spread of infectious diseases⁴. Subject to these qualifications, the local authority may grant or refuse a licence as it thinks fit⁵. If it grants a licence it must specify certain conditions⁶ and may specify such other conditions as it thinks fit⁷; these conditions may be subsequently varied or (except where compulsory) revoked⁸. Where a person is aggrieved by the refusal of a local authority to grant a licence, by a condition on a granted licence, or by the variation or revocation of a condition, he may appeal to a magistrates' court⁹.

The licence relates to the year in which it was granted or the following year, and thereafter expires¹⁰.

1 Dangerous Wild Animals Act 1976 s 1(2). The application must be accompanied by such fee as the authority may stipulate: s 1(2)(e). As to the meaning of 'dangerous wild animal' for these purposes see PARA 1029 note 2.

2 See the Dangerous Wild Animals Act 1976 s 1(4). As to disqualification of persons from keeping dangerous wild animals see PARA 1029 note 8.

3 Dangerous Wild Animals Act 1976 s 1(2)(d).

4 See the Dangerous Wild Animals Act 1976 s 1(3).

5 Dangerous Wild Animals Act 1976 s 1(6).

6 The mandatory conditions are (1) conditions that, while any animal concerned is being kept only under the authority of the licence, (a) it is to be kept by no person other than such person or persons as is or are specified (whether by name or description); (b) it must normally be held at such premises as are specified; (c) it must not be moved from those premises, or only in such circumstances as are specified; (d) the person to whom the licence is granted must hold a current insurance policy which insures him and any other person entitled to keep the animal under the authority of the licence against liability for any damage which may be caused by the animal; and (e) the terms of any such policy must be satisfactory in the opinion of the authority; (2) conditions restricting the species (whether one or more) of animal, and number of animals of each species, which may be kept under the authority of the licence; (3) a condition that the person to whom the licence is granted must at all reasonable times make available a copy of the licence to any person entitled to keep any animal under the authority of the licence; (4) such other conditions as in the opinion of the authority are necessary or desirable for the purpose of securing the objects specified in the Dangerous Wild Animals Act 1976 s 1(3)(c)-(f) (welfare of the animal): s 1(6).

7 Dangerous Wild Animals Act 1976 s 1(7). Where a local authority proposes to insert in a licence a provision permitting any animal to be, for any continuous period exceeding 72 hours, at premises outside the area of the authority, it must consult the local authority in whose area those premises are situated: s 1(8).

8 See the Dangerous Wild Animals Act 1976 s 1(9), (10).

9 Dangerous Wild Animals Act 1976 s 2(1). As to the meaning of 'person aggrieved' see **JUDICIAL REVIEW**.

10 See the Dangerous Wild Animals Act 1976 s 2(2), (3). On the death of the licensee, the licence passes to the personal representatives for up to 28 days: see s 2(4).

UPDATE

1028-1031 Conservation of whales and seals ... Destructive imported animals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1030 Licences for keeping dangerous wild animals

TEXT AND NOTE 10--1976 Act s 2(2), (3) substituted, and s 2(3A), (3B) added: SI 2010/839.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(7) DESTRUCTIVE IMPORTED ANIMALS/1031. Destructive imported animals.

(7) DESTRUCTIVE IMPORTED ANIMALS

1031. Destructive imported animals.

Under the Destructive Imported Animals Act 1932 the Secretary of State and the Welsh Ministers are empowered to prohibit, either absolutely or except under licence, the importation into, and the keeping within, Great Britain, of a number of designated species of animals¹. Regulations may be made with regard to licences in relation to such species².

Duties are imposed on the occupiers of land on which animals of such species are found at large³. No claim for damages lies in respect of the killing or wounding of such an animal found at large⁴. It is an offence to import or keep an animal contrary to this prohibition, to fail to comply with a licence, or to turn such an animal loose⁵.

In addition to a general licence, a special licence may be granted permitting the keeping of such animals for exhibition, for the purposes of scientific research or other exceptional purposes⁶.

¹ See the Destructive Imported Animals Act 1932 s 1(1) (amended by SI 1955/554); and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1025. This provision specifies musk rats (or musquash); and the Musk Rats (Prohibition of Importation and Keeping) Order 1933, SR & O 1933/106, is made under this provision. As to the meaning of 'Great Britain' see PARA 830 note 21.

The Destructive Imported Animals Act 1932 s 10 permits this power to be exercised in relation to other non-indigenous mammalian species, thereby extending the remaining provisions of the Act to such species. The following further orders have been made, namely: the Grey Squirrels (Prohibition of Importation and Keeping) Order 1937, SR & O 1937/478; the Non-Indigenous Rabbits (Prohibition of Importation and Keeping) Order 1954, SI 1954/927; the Coypus (Keeping) Order 1987, SI 1987/2195; and the Mink Keeping (Prohibition) (England) Order 2004, SI 2004/100.

² See the Destructive Imported Animals Act 1932 s 2; the Mink (Keeping) Regulations 1975, SI 1975/2223 (amended by SI 1982/1883; and SI 1997/2750); and the Coypus (Special Licence) (Fees) Regulations 1997, SI 1997/2751. See also the Destructive Imported Animals Act 1932 s 3, under which the Mink (Importation) General Licence 1967, SI 1967/1874 (now spent), was made.

³ See the Destructive Imported Animals Act 1932 s 5(1)-(3), (3A) (s 5(3) amended and s 5(3A) added by the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 para 1).

⁴ Destructive Imported Animals Act 1932 s 5(5).

⁵ See the Destructive Imported Animals Act 1932 s 6 (amended by the Natural Environment and Rural Communities Act 2006 s 53, Sch 6 para 1); and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 1025-1027.

⁶ See the Destructive Imported Animals Act 1932 s 8. As to the restrictions on conducting scientific research on animals see PARA 875 et seq.

UPDATE

1028-1031 Conservation of whales and seals ... Destructive imported animals

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(8) HUNTING WITH HOUNDS AND HARE COURSING/1032. Miscellaneous provisions as to hunting with hounds.

(8) HUNTING WITH HOUNDS AND HARE COURSING

1032. Miscellaneous provisions as to hunting with hounds.

Hunting with hounds and hare coursing are now prohibited, subject to specified exceptions¹. However, a number of legislative provisions still refer to the practice of hunting with dogs. Lawful hunting with hounds sometimes exempts the hunter from certain requirements, or provides a defence in a case where an activity would be prohibited.

The requirement for dogs to wear collars does not apply to packs of hounds². Similarly, the offence of worrying livestock, if committed by a dog being at large, that is to say not on a leash or under close control, in a field or enclosure where there are sheep, does not apply to a working gun dog or a pack of hounds³. A person is not guilty of an offence of mutilating, kicking, beating, nailing or otherwise impaling, stabbing, burning, stoning, crushing, drowning, dragging or asphyxiating any wild mammal with intent to inflict unnecessary suffering, if he shows that the wild mammal had been injured or taken in the course of either lawful shooting, hunting, coursing or pest control activity⁴.

However, membership of a hunt does not provide an excuse for trespass, and a master of hounds may in certain circumstances be liable for trespass committed by members of the hunt⁵.

1 See the Hunting Act 2004; and PARA 1033 et seq.

2 See the Control of Dogs Order 1992, SI 1992/901, art 2(2); and PARA 909 text and notes 3-4.

3 See the Dogs (Protection of Livestock) Act 1953 s 1(2A); and PARA 924 text and note 7.

4 See the Wild Mammals (Protection) Act 1996 s 2; the Hunting Act 2004 s 13(1), Sch 2 para 5; and PARA 1017.

5 See *League Against Cruel Sports Ltd v Scott* [1986] QB 240, [1985] 2 All ER 489; and PARAS 779 text and note 7, 752 note 5.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(8) HUNTING WITH HOUNDS AND HARE COURSING/1033. Offence of hunting with dogs and hare coursing.

1033. Offence of hunting with dogs and hare coursing.

A person commits an offence if he hunts a wild mammal¹ with a dog², unless his hunting is exempt³. Hunting is exempt if it is within a specified class⁴. The Secretary of State or the Welsh Ministers⁵ may by order vary a class of exempt hunting⁶. A person commits an offence if he knowingly permits land which belongs to him⁷ to be entered or used in the course of the commission of an offence of hunting a wild mammal with a dog⁸. A person commits an offence if he knowingly permits a dog which belongs to him⁹ to be used in the course of the commission of an offence of hunting a wild mammal with a dog¹⁰. It is a defence to a person charged with an offence of hunting a wild mammal with a dog¹¹ to show that he reasonably believed that the hunting was exempt¹².

A person commits an offence if he (1) participates in a hare coursing event¹³; (2) attends a hare coursing event; (3) knowingly facilitates a hare coursing event; or (4) permits land which belongs to him to be used for the purposes of a hare coursing event¹⁴. Each of the following persons commits an offence if a dog participates in a hare coursing event: (a) any person who enters the dog for the event; (b) any person who permits the dog to be entered; and (c) any person who controls or handles the dog in the course of or for the purposes of the event¹⁵.

A person guilty of an offence under the provisions above is liable on summary conviction to a fine not exceeding level 5 on the standard scale¹⁶.

1 In the Hunting Act 2004, 'wild mammal' includes, in particular (1) a wild mammal which has been bred or tamed for any purpose; (2) a wild mammal which is in captivity or confinement; (3) a wild mammal which has escaped or been released from captivity or confinement; and (4) any mammal which is living wild: s 11(1).

2 For these purposes, a reference to a person hunting a wild mammal with a dog includes, in particular, any case where (1) a person engages or participates in the pursuit of a wild mammal; and (2) one or more dogs are employed in that pursuit (whether or not by him and whether or not under his control or direction): Hunting Act 2004 s 11(2).

3 Hunting Act 2004 s 1. The prohibitions introduced by the Hunting Act 2004 are compatible with the EC Treaty and the European Convention on Human Rights: *R (on the application of the Countryside Alliance) v A-G*; *R (on the application of Derwin) v A-G* [2007] UKHL 52, [2008] 2 All ER 95, [2007] 3 WLR 922.

4 I.e. one specified in the Hunting Act 2004 Sch 1: s 2(1). As to the exempt classes see PARAS 1034-1037.

5 As to the Secretary of State see PARA 705; as to the Welsh Ministers see PARA 706.

6 I.e. by amending the Hunting Act 2004 Sch 1: s 2(2).

7 For these purposes, land belongs to a person if he (1) owns an interest in it; (2) manages or controls it; or (3) occupies it: Hunting Act 2004 s 11(3).

8 Hunting Act 2004 s 3(1).

9 For these purposes, a dog belongs to a person if he (1) owns it; (2) is in charge of it; or (3) has control of it: Hunting Act 2004 s 11(4).

10 Hunting Act 2004 s 3(2).

11 I.e. one under the Hunting Act 2004 s 1.

12 Hunting Act 2004 s 4.

13 A 'hare coursing event' is a competition in which dogs are, by the use of live hares, assessed as to skill in hunting hares: Hunting Act 2004 s 5(3).

14 Hunting Act 2004 s 5(1).

15 Hunting Act 2004 s 5(2).

16 Hunting Act 2004 s 6. As to the standard scale see PARA 738 note 1.

Where such an offence is committed by a body corporate with the consent or connivance of an officer of the body, the officer, as well as the body, is guilty of the offence: s 10(1), (2). For these purposes, a reference to an officer of a body corporate includes a reference to (1) a director, manager or secretary; (2) a person purporting to act as a director, manager or secretary; and (3) if the affairs of the body are managed by its members, a member: s 10(3).

UPDATE

1033 Offence of hunting with dogs and hare coursing

NOTES 3, 4--See *DPP v Wright*; *R (on the application of Scott) v Taunton Dean Magistrates' Court* [2009] EWHC 105 (Admin), [2009] 3 All ER 726.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(8) HUNTING WITH HOUNDS AND HARE COURSING/1034.
Exemptions: stalking and flushing out.

1034. Exemptions: stalking and flushing out.

Stalking a wild mammal¹, or flushing it out of cover, is exempt hunting² if:

- 215 (1) the stalking or flushing out is undertaken for the purpose of (a) preventing or reducing serious damage which the wild mammal would otherwise cause to livestock, game birds or wild birds³, food for livestock, crops (including vegetables and fruit), growing timber, fisheries, other property or the biological diversity of an area⁴; (b) obtaining meat to be used for human or animal consumption; or (c) participation in a field trial⁵;
- 216 (2) the stalking or flushing out takes place on land which belongs to the person⁶ doing the stalking or flushing out or which he has been given permission to use for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs;
- 217 (3) the stalking or flushing out does not involve the use of more than two dogs;
- 218 (4) the stalking or flushing out does not involve the use of a dog below ground otherwise than in accordance with specified conditions⁷; and
- 219 (5) reasonable steps are taken for the purpose of ensuring that, as soon as possible after being found or flushed out, the wild mammal is shot dead by a competent person, and, in particular, each dog used in the stalking or flushing out is kept under sufficiently close control to ensure that it does not prevent or obstruct achievement of that objective⁸.

The conditions specified for the purposes of head (4) are (i) the stalking or flushing out is undertaken for the purpose of preventing or reducing serious damage to game birds or wild birds⁹ which a person is keeping or preserving for the purpose of their being shot; (ii) the person doing the stalking or flushing out has with him written evidence that the land on which the stalking or flushing out takes place belongs to him, or that he has been given permission to use that land for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs, and makes the evidence immediately available for inspection by a constable who asks to see it; and (iii) the stalking or flushing out does not involve the use of more than one dog below ground at any one time¹⁰.

1 As to the meaning of 'wild mammal' see PARA 1033 note 1.

2 Ie for the purposes of the Hunting Act 2004 ss 1, 2: see PARA 1033.

3 Ie within the meaning of the Wildlife and Countryside Act 1981 s 27: see PARA 994 note 1.

4 Ie within the meaning of the United Nations Environmental Programme Convention on Biological Diversity of 1992: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 757

5 'Field trial' means a competition (other than a hare coursing event within the meaning of the Hunting Act 2004 s 5 (see PARA 1033)) in which dogs (1) flush animals out of cover or retrieve animals that have been shot (or both); and (2) are assessed as to their likely usefulness in connection with shooting: s 2(1), Sch 1 para 1(3).

6 As to when land belongs to a person for the purposes of the Hunting Act 2004 see PARA 1033 note 7.

7 Ie those contained in the Hunting Act 2004 Sch 1 para 2.

8 Hunting Act 2004 Sch 1 para 1. In the context of the Scottish legislation see *Fraser (Procurator Fiscal, Jedburgh) v Adams* 2005 SCCR 54.

9 le within the meaning of the Wildlife and Countryside Act 1981 s 27.

10 Hunting Act 2004 Sch 1 para 2(1)-(4). In so far as stalking or flushing out is undertaken with the use of a dog below ground in accordance with Sch 1 para 2, Sch 1 para 1 has effect as if for the condition in head (5) of the text there were substituted the condition that (1) reasonable steps are taken for the purpose of ensuring that, as soon as possible after being found, the wild mammal is flushed out from below ground; (2) reasonable steps are taken for the purpose of ensuring that, as soon as possible after being flushed out from below ground, the wild mammal is shot dead by a competent person; (3) in particular, the dog is brought under sufficiently close control to ensure that it does not prevent or obstruct achievement of the objective in head (2); (4) reasonable steps are taken for the purpose of preventing injury to the dog; and (5) the manner in which the dog is used complies with any code of practice which is issued or approved for this purpose by the Secretary of State or the Welsh Ministers: Sch 1 para 2(5). As to the Secretary of State see PARA 705; and as to the Welsh Ministers see PARA 706.

UPDATE

1034 Exemptions: stalking and flushing out

NOTES--Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(8) HUNTING WITH HOUNDS AND HARE COURSING/1035.
Exemptions: rats, rabbits, retrieval of hares and falconry.

1035. Exemptions: rats, rabbits, retrieval of hares and falconry.

The following forms of hunting are exempt¹: (1) the hunting of rats, if it takes place on land which belongs² to the hunter or which he has been given permission to use for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs³; (2) the hunting of rabbits, if it takes place on land which belongs to the hunter or which he has been given permission to use for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs⁴; (3) the hunting of a hare which has been shot, if it takes place on land which belongs to the hunter or which he has been given permission to use for the purpose of hunting hares by the occupier or, in the case of unoccupied land, by a person to whom it belongs⁵; and (4) flushing a wild mammal⁶ from cover, if it is undertaken (a) for the purpose of enabling a bird of prey to hunt the wild mammal; and (b) on land which belongs to the hunter or which he has been given permission to use for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs⁷.

1 le for the purpose of the Hunting Act 2004 ss 1, 2: see PARA 1033.

2 As to when land belongs to a person for the purposes of the Hunting Act 2004 see PARA 1033 note 7.

3 Hunting Act 2004 s 2(1), Sch 1 para 3.

4 Hunting Act 2004 Sch 1 para 4.

5 Hunting Act 2004 Sch 1 para 5.

6 As to the meaning of 'wild mammal' see PARA 1033 note 1.

7 Hunting Act 2004 Sch 1 para 6.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(8) HUNTING WITH HOUNDS AND HARE COURSING/1036.
Exemptions: recovery and rescue of wild mammals.

1036. Exemptions: recovery and rescue of wild mammals.

The hunting of a wild mammal¹ which has escaped or been released from captivity or confinement is exempt hunting² if (1) the hunting takes place (a) on land which belongs³ to the hunter; (b) on land which he has been given permission to use for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs; or (c) with the authority of a constable; (2) reasonable steps are taken for the purpose of ensuring that, as soon as possible after being found, the wild mammal is recaptured or shot dead by a competent person, and, in particular, each dog used in the hunt is kept under sufficiently close control to ensure that it does not prevent or obstruct achievement of that objective; and (3) the wild mammal was not released for the purpose of being hunted and was not, for that purpose, permitted to escape⁴.

The hunting of a wild mammal is exempt hunting if (i) the hunter reasonably believes that the wild mammal is or may be injured; (ii) the hunting is undertaken for the purpose of relieving the wild mammal's suffering; (iii) the hunting does not involve the use of more than two dogs; (iv) the hunting does not involve the use of a dog below ground; (v) the hunting takes place (A) on land which belongs to the hunter; (B) on land which he has been given permission to use for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs; or (C) with the authority of a constable; (vi) reasonable steps are taken for the purpose of ensuring that, as soon as possible after the wild mammal is found, appropriate action (if any) is taken to relieve its suffering and, in particular, each dog used in the hunt is kept under sufficiently close control to ensure that it does not prevent or obstruct achievement of that objective; and (vii) the wild mammal was not harmed for the purpose of enabling it to be hunted in reliance on the above provisions⁵.

1 As to the meaning of 'wild mammal' see PARA 1033 note 1.

2 ie for the purpose of the Hunting Act 2004 ss 1, 2: see PARA 1033.

3 As to when land belongs to a person for the purposes of the Hunting Act 2004 see PARA 1033 note 7.

4 Hunting Act 2004 s 2(1), Sch 1 para 7.

5 Hunting Act 2004 Sch 1 para 8.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(8) HUNTING WITH HOUNDS AND HARE COURSING/1037.
Exemptions: research and observation.

1037. Exemptions: research and observation.

The hunting of a wild mammal¹ is exempt hunting² if (1) the hunting is undertaken for the purpose of or in connection with the observation or study of the wild mammal; (2) the hunting does not involve the use of more than two dogs; (3) the hunting does not involve the use of a dog below ground; (4) the hunting takes place on land which belongs³ to the hunter or which he has been given permission to use for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs; and (5) each dog used in the hunt is kept under sufficiently close control to ensure that it does not injure the wild mammal⁴.

1 As to the meaning of 'wild mammal' see PARA 1033 note 1.

2 Ie for the purpose of the Hunting Act 2004 ss 1, 2: see PARA 1033.

3 As to when land belongs to a person for the purposes of the Hunting Act 2004 see PARA 1033 note 7.

4 Hunting Act 2004 s 2(1), Sch 1 para 9.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(8) HUNTING WITH HOUNDS AND HARE COURSING/1038. Arrest, search and seizure.

1038. Arrest, search and seizure.

Where a constable reasonably suspects that a person (the 'suspect') is committing or has committed an offence in relation to hunting¹, then (1) if the constable reasonably believes that evidence of the offence is likely to be found on the suspect, the constable may stop the suspect and search him; (2) if the constable reasonably believes that evidence of the offence is likely to be found on or in a vehicle, animal or other thing of which the suspect appears to be in possession or control, the constable may stop and search the vehicle, animal or other thing; and (3) a constable may seize and detain a vehicle, animal or other thing if he reasonably believes that it may be used as evidence in criminal proceedings for an offence in relation to hunting² or it may be made the subject of a forfeiture order³. For the purposes of exercising a power of search and seizure⁴, a constable may enter land, premises other than a dwelling or a vehicle⁵. The exercise of a power of search and seizure does not require a warrant⁶.

1 le one under the Hunting Act 2004 Pt 1 (ss 1-5): see PARA 1033.

2 le one under the Hunting Act 2004 Pt 1.

3 Hunting Act 2004 s 8(1)-(4). As to forfeiture orders see s 9; and PARA 1039.

4 le under the Hunting Act 2004 s 8.

5 Hunting Act 2004 s 8(5).

6 Hunting Act 2004 s 8(6).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/10. PROTECTION AND KEEPING OF WILD ANIMALS/(8) HUNTING WITH HOUNDS AND HARE COURSING/1039. Forfeiture.

1039. Forfeiture.

A court which convicts a person of an offence in relation to hunting¹ may order the forfeiture of any dog or hunting article² which was used in the commission of the offence or was in the possession of the person convicted at the time of his arrest³. A court which convicts a person of such an offence may order the forfeiture of any vehicle which was used in the commission of the offence⁴. A forfeiture order may include such provision about the treatment of the dog, vehicle or article forfeited as the court thinks appropriate and, subject to such provision, must be treated as requiring any person who is in possession of the dog, vehicle or article to surrender it to a constable as soon as is reasonably practicable⁵. Where a forfeited dog, vehicle or article is retained by or surrendered to a constable, the police force of which the constable is a member must ensure that such arrangements are made for its destruction or disposal as are specified in the forfeiture order or, where no arrangements are specified in the order, as seem to the police force to be appropriate⁶. The court which makes a forfeiture order may order the return of the forfeited dog, vehicle or article on an application made (1) by a person who claims to have an interest in the dog, vehicle or article (other than the person on whose conviction the order was made); and (2) before the dog, vehicle or article has been destroyed or finally disposed of⁷. A person commits an offence if he fails to comply with a forfeiture order or to co-operate with a step taken for the purpose of giving effect to a forfeiture order⁸.

1 Ie one under the Hunting Act 2004 Pt 1 (ss 1-5): see PARA 1033.

2 'Hunting article' means anything designed or adapted for use in connection with hunting a wild mammal or hare coursing: Hunting Act 2004 s 9(3). As to the meaning of 'wild mammal' see PARA 1033 note 1.

3 Hunting Act 2004 s 9(1).

4 Hunting Act 2004 s 9(2).

5 Hunting Act 2004 s 9(4).

6 Hunting Act 2004 s 9(5).

7 Ie under the Hunting Act 2004 s 9(5): s 9(6).

8 Hunting Act 2004 s 9(7).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(1) INTRODUCTION/1040. Statutory provisions.

11. ANIMAL HEALTH

(1) INTRODUCTION

1040. Statutory provisions.

The common law position with its accent on liability to third parties¹ has been greatly added to in modern times by legislation aimed at the eradication and prevention of disease in animals, and for these purposes statutory controls have been established over the whole field of animal movement, treatment and slaughter. The principal provisions are to be found in the Animal Health Act 1981 and in regulations made thereunder².

Wide powers are conferred by the Act on the Secretary of State and the Welsh Ministers³ and upon local authorities⁴, upon whom further powers may be conferred by the Secretary of State or the Welsh Ministers⁵.

Measures have also been taken by the European Union to improve the health of livestock⁶.

1 See PARA 751.

2 The Animal Health Act 1981 consolidates the Diseases of Animals Acts 1935, 1950 and 1975, the Ponies Act 1969, the Rabies Act 1974 and certain related enactments: see the Animal Health Act 1981, long title. Importation orders made under the Diseases of Animals Act 1950 ss 24-33 (substituted and amended by the Diseases of Animals Act 1975 (repealed) ss 1, 4 (3), Sch 2) continue in force as if s 1 had not come into operation, except that they may be varied or revoked as if made under the Animal Health Act 1981 s 10: s 95(1), (2). Other orders made under the Acts repealed by the Animal Health Act 1981 continue to have effect, so far as not revoked, superseded or spent, by virtue of the Interpretation Act 1978 s 17(2)(b).

Many orders under the Animal Health Act 1981 have been made to give effect in the United Kingdom to European Community legislation. In addition to this, the European Communities Act 1972 requires the United Kingdom to make subordinate legislation giving effect to European Community provisions, and accordingly some domestic legislation (eg the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228; and the Transmissible Spongiform Encephalopathies (Wales) Regulations 2006, SI 2006/1226 (see PARA 1071) is made under the European Communities Act 1972 rather than the Animal Health Act 1981.

3 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

4 As to the meaning of 'local authority' see PARA 1121.

5 See PARA 1115.

6 As to livestock generally see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1058 et seq.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1040 Statutory provisions

NOTE 2--SI 2006/1228 replaced: Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881. SI 2006/1226 replaced: Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2009/192).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(1) INTRODUCTION/1041. Meaning of 'animals'.

1041. Meaning of 'animals'.

Unless the context otherwise requires, the word 'animals' in the Animal Health Act 1981 generally means cattle¹, sheep and goats, and all other ruminating animals and swine². The Secretary of State or the Welsh Ministers³ may, however, by order⁴ extend this definition to include, for any purpose of the Act, any kind of mammal except man, and any kind of four-footed beast which is not a mammal⁵, and to include for any purpose of the Act (except so far as it relates to disease) fish, reptiles, crustaceans or other cold-blooded creatures of any species⁶.

1 'Cattle' means bulls, cows, steers, heifers and calves: Animal Health Act 1981 s 89(1).

2 Animal Health Act 1981 s 87(1). The Act generally has effect in relation to poultry as it does in relation to animals: s 87(4). As to the meaning of 'poultry' see PARA 1103.

Under certain provisions of the Act, the meaning given in the text does not apply: see eg s 10(4) and Sch 2.

3 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

4 This power has been frequently exercised. See the Psittacosis or Ornithosis Order 1953, SI 1953/38; the Diseases of Animals (Ascertainment of Compensation) Order 1959, SI 1959/1335 (amended by SI 1964/1150; SI 1964/1152); the Hares (Control of Importation) Order 1965, SI 1965/2040 (amended by SI 1990/2371); the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211 (amended by SI 1977/361; SI 1984/1182; SI 1986/2062; SI 1990/2371; SI 1993/1813; SI 1994/1405; SI 1994/1716; SI 1995/2922; SI 1999/3443; SI 2000/1298; SI 2000/1641; SI 2002/882 (Wales); SI 2002/2135; and SI 2004/2364 (England)); the Importation of Processed Animal Protein Order 1981, SI 1981/677 (amended by SI 1982/459; SI 1990/2371); the Aujeszky's Disease Order 1983, SI 1983/344 (amended by SI 1994/3141; SI 1995/11; SI 1995/2922); the Infectious Diseases of Horses Order 1987, SI 1987/790 (amended by SI 1992/3159; SI 1995/2922); the Zoonoses Order 1989, SI 1989/285; the Anthrax Order 1991, SI 1991/2814 (amended by SI 1995/2922; SI 1996/1855); the Specified Diseases (Notification) Order 1996, SI 1996/2628 (amended by SI 1998/1645; SI 2006/2166; and SI 2006/2237); the Movement of Animals (Restrictions) (England) Order 2002, SI 2002/3229; the Movement of Animals (Restrictions) (Wales) Order 2003, SI 2003/399; the Transport of Animals (Cleansing and Disinfection) (Wales) Order 2003, SI 2003/482; the Transport of Animals (Cleansing and Disinfection) (England) (No 3) Order 2003, SI 2003/1724 (amended by SI 2006/3260; and SI 2007/1020); the Transport of Animals (Cleansing and Disinfection) (Wales) (No 3) Order 2003, SI 2003/1968 (amended by SI 2008/789); the Animal By-Products (Wales) Regulations 2003, SI 2003/2756; the Animal By-Products Regulations 2005, SI 2005/2347 (England); the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260; the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047; the Avian Influenza and Influenza of Avian Origin in Mammals (England) (No 2) Order 2006, SI 2006/2702; the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006, SI 2006/2927; the Tuberculosis (England) Order 2007, SI 2007/740; and the Tuberculosis (Wales) Order 2006, SI 2006/1053.

As to the exercise of the power in relation to the definition of poultry see PARA 1103.

5 Animal Health Act 1981 s 87(2).

6 Animal Health Act 1981 s 87(3). This latter power may only be exercised in respect of creatures not covered by the power available under s 87(2) (see text and note 5): s 87(3). As to diseases in fish see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 894 et seq.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1041 Meaning of 'animals'

NOTE 4--SI 1983/344, SI 1987/790, SI 1991/2814, SI 1996/2628, SI 2007/740 amended: SI 2009/2713 (England). SI 2003/399 amended: SI 2009/2940. SI 2005/2347 amended: SI 2009/1119. SI 2006/2702 amended: see PARA 868. SI 2006/1053 replaced: Tuberculosis (Wales) Order 2010, SI 2010/1379.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(1) INTRODUCTION/1042. Meaning of 'disease'.

1042. Meaning of 'disease'.

Unless the context otherwise requires, and except in relation to poultry¹, the word 'disease' in the Animal Health Act 1981 means cattle plague or rinderpest², contagious pleuro-pneumonia of cattle, foot-and-mouth disease, sheep-pox, sheep scab or swine fever³. The Secretary of State or the Welsh Ministers⁴ may, however, by order⁵ extend this definition to include, for any purpose of the Act, any other disease of animals⁶.

1 As to which see the Animal Health Act 1981 s 88(3); and PARA 1103.

2 See the Animal Health Act 1981 s 89(1).

3 Animal Health Act 1981 ss 88(1), 89(1). 'Swine-fever' means typhoid fever of swine, soldier purples, red disease, hog cholera or swine-plague: s 89(1).

Under certain provisions of the Act, the meaning given in the text does not apply: see eg the Animal Health Act 1981 ss 3(1), 5(1), 10(4), Sch 2.

4 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

5 See eg the Hares (Control of Importation) Order 1965, SI 1965/2040 (amended by SI 1990/2371); the Diseases of Animals (Extension of Definitions) Order 1971, SI 1971/531; the Swine Vesicular Disease Order 1972, SI 1972/1980 (amended by SI 1973/101; SI 1977/944; and SI 1993/3119); the Rabies (Control) Order 1974, SI 1974/2212 (amended by SI 1995/2922); the Warble Fly (England and Wales) Order 1982, SI 1982/234 (amended by SI 1985/328; SI 1987/1601; SI 1989/244; SI 1994/3142; and SI 2006/2407); the Aujeszky's Disease Order 1983, SI 1983/344 (amended by SI 1994/3141; SI 1995/11; and SI 1995/2922); the Warble Fly (Ascertainment of Infestation) (England and Wales) Order 1985, SI 1985/1766; the Zoonoses Order 1988, SI 1988/2264 (amended by SI 1997/2964); the Anthrax Order 1991, SI 1991/2814 (amended by SI 1995/2922; SI 1996/1855); the Specified Diseases (Notification and Slaughter) Order 1992, SI 1992/3159 (amended by SI 1996/2628; SI 2006/2166; and SI 2006/2237); the Equine Viral Arteritis Order 1995, SI 1995/1755 (amended by SI 1995/2922); the Specified Diseases (Notification) Order 1996, SI 1996/2628 (amended by SI 1998/1645; SI 2006/2166; and SI 2006/2237); the Specified Animal Pathogens Order 2008, SI 2008/944; the Movement of Animals (Restrictions) (England) Order 2002, SI 2002/3229; the Movement of Animals (Restrictions) (Wales) Order 2003, SI 2003/399; the Transport of Animals (Cleansing and Disinfection) (England) (No 3) Order 2003, SI 2003/1724 (amended by SI 2006/3260, SI 2007/1020); the Transport of Animals (Cleansing and Disinfection) (Wales) (No 3) Order 2003, SI 2003/1968 (amended by SI 2008/789); the Animal By-Products (Wales) Regulations 2003, SI 2003/2756; the African Swine Fever (England) Order 2003, SI 2003/2913; African Swine Fever (Wales) Order 2003, SI 2003/3273; the Animal By-Products Regulations 2005, SI 2005/2347 (England); the Tuberculosis (Wales) Order 2006, SI 2006/1053; the Specified Diseases (Notification and Slaughter) Order 2006, SI 2006/2166; the Specified Diseases (Notification and Slaughter) (Wales) Order 2006, SI 2006/2237; the Tuberculosis (England) Order 2007, SI 2007/740; the Avian Influenza and Influenza of Avian Origin in Mammals (England) (No 2) Order 2006, SI 2006/2702; the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006, SI 2006/2927; the Avian Influenza (H5N1 in Wild Birds) (England) Order, SI 2006/3249 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Wild Birds) (Wales) Order 2006, SI 2006/3310 (amended by SI 2007/3375); the Bluetongue (No 2) Order 2007, SI 2007/3304 (amended by SI 2008/962); the Bluetongue (No 2) (Wales) Order 2007, SI 2007/3309 (amended by SI 2008/1090).

As to the diseases applicable to poultry see PARA 1103. As to diseases in fish see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 894 et seq.

6 Animal Health Act 1981 s 88(2).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1042 Meaning of 'disease'

NOTE 5--SI 1972/1980 (as amended) replaced: Swine Vesicular Disease Regulations 2009, SI 2009/1299 (England); Swine Vesicular Disease (Wales) Regulations 2009, SI 2009/1372 (amended by SI 2009/1580). SI 1974/2212, SI 1995/1755, SI 2003/2913 amended: SI 2009/2713 (England). SI 1983/344, SI 1991/2814, SI 1996/2628, SI 2003/399, SI 2005/2347, SI 2007/740 amended: see PARA 1041. SI 2006/2702 amended: see PARA 868. SI 2008/944 amended: SI 2009/3083. SI 2006/1053 replaced: Tuberculosis (Wales) Order 2010, SI 2010/1379.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(i) In general/1043. Eradication of disease.

(2) ERADICATION AND PREVENTION OF DISEASE

(i) In general

1043. Eradication of disease.

Power is given to the Secretary of State and the Welsh Ministers¹ to expend sums, with Treasury approval, with the object of eradicating as far as practicable diseases of animals in Great Britain². For the purpose of obtaining information required for these purposes, the Secretary of State or the Welsh Ministers may authorise in writing any veterinary inspector or other officer of the Department³ to inspect animals, and any person so authorised may at reasonable times on producing his authority if demanded enter on any land or premises and apply such tests and take such samples as they consider necessary⁴. In this connection 'animals' include horses and poultry and 'disease' is not restricted by its definition in the Animal Health Act 1981⁵. The Secretary of State or the Welsh Ministers may make orders declaring eradication areas for cattle for any particular disease when they are satisfied that a substantial majority of the cattle therein are free from the disease⁶, and declaring attested areas when they are satisfied that the disease is for practical purposes non-existent⁷. They may also make orders prohibiting and regulating the movement of cattle into, out of or within such areas or, if the area is an eradication or attested area for brucellosis, imposing necessary restrictions there for the purpose of eradicating that disease⁸.

The Secretary of State and the Welsh Ministers also have power to draw up schemes, with Treasury consent, for the purpose of eradicating brucellosis in cattle⁹.

The Secretary of State and the Welsh Ministers have power, with Treasury approval, to afford veterinary services, including diagnostic services, to persons who carry on livestock businesses and who participate in approved arrangements for keeping their stock so far as practicable free from disease and in good health¹⁰.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706. As to European Community provision for eradication and control see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1011 et seq.

2 Animal Health Act 1981 s 3(1). A person who knowingly or recklessly makes a false statement for the purpose of obtaining for himself or any other person any sum payable under s 3 is liable on summary conviction to a fine of level 3 on the standard scale or imprisonment for three months, or both: s 4(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 738 note 1. As to the meaning of 'Great Britain' see PARA 830 note 21.

The Pig Industry Levy Act 1983 imposes a levy on the pig industry to cover the costs of eradicating Aujeszky's disease: see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1066.

3 I.e. an officer of the Department for the Environment, Food and Rural Affairs: see PARA 705.

4 Animal Health Act 1981 s 3(2), (3). Obstruction of any person duly authorised to make an inspection for the purpose of such eradication is punishable with a fine of level 3 on the standard scale or imprisonment for one month, or both: s 4(2) (as amended: see note 2).

5 Animal Health Act 1981 ss 3(1), 87(4). As to the meaning of 'disease' under the Act in relation to animals see PARA 1042, and, in relation to poultry, see PARA 1103.

6 Animal Health Act 1981 s 6(a).

7 Animal Health Act 1981 s 6(b). The whole of England and Wales, subject to certain exceptions, is now an attested area for purposes connected with the control of tuberculosis: see the Tuberculosis (England and Wales Attested Area) Order 1960, SI 1960/1708.

8 Animal Health Act 1981 s 6(c). See the Brucellosis (England) Order 2000, SI 2000/2055 (amended by SI 2008/618); the Enzootic Bovine Leukosis (England) Order 2000, SI 2000/2056; the Brucellosis (Wales) Order 2006, SI 2006/866; and the Enzootic Bovine Leukosis (Wales) Order 2006, SI 2006/867.

9 Agriculture Act 1970 s 106(1): see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1076. See the Milk (Eradication of Brucellosis) Scheme 1970, SI 1970/1277 (amended by SI 1971/532; SI 1972/1645; SI 1976/387); the Brucellosis Payments Scheme 1971, SI 1971/1967; the Brucellosis (Beef Incentives) (Payments) Scheme 1972, SI 1972/1329 (amended by SI 1975/2211); and the Brucellosis Incentive Payments Scheme 1977, SI 1977/1303 (amended by SI 1978/594). It is an offence to offer for sale otherwise than for slaughter any animal known to be a reactor to brucella abortus: Agriculture Act 1970 s 106(4) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46).

10 Animal Health Act 1981 s 5(1). For this purpose 'disease' is not restricted by its definition in the Act (see PARA 1042): s 5(1). As to the regulation of the manufacture of and other matters connected with veterinary therapeutic substances see PARA 1132; and **MEDICINAL PRODUCTS AND DRUGS**.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1043 Eradication of disease

NOTE 8--SI 2000/2055, SI 2000/2056 amended: SI 2009/2713.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(i) In general/1044. Control of zoonoses.

1044. Control of zoonoses.

With a view to reducing the risk to human health from any disease¹ of, or organism carried in, animals² the Secretary of State or the Welsh Ministers³ may by order designate any such disease or organism which in his or their opinion constitutes such a risk⁴, may modify in relation to a designated disease the effect of any provision of the Animal Health Act 1981 which has effect in relation to the disease⁵, and may, subject to any such modification, apply any provision of that Act in relation to the presence of a designated organism in an animal as if the presence of the organism were a disease to which that Act applied⁶.

The Secretary of State or the Welsh Ministers may by order require a person who, in specified circumstances, knows or has reason to suspect that an animal of a specified description is or was affected with a designated disease or is or was a carrier of a designated organism to furnish information to a specified person in a specified form and time⁷; and, if it appears to the Secretary of State or the Welsh Ministers that a person may have information relating to such an animal, he or they may by written notice require him to furnish it to a specified person in a specified form and time⁸.

A veterinary inspector⁹ who has reason to believe that such an animal is or has been on any land may, on producing if required evidence of his authority, enter on the land and make tests and take samples there, and may require the owner or person having charge of any animals there to take specified steps to collect or restrain them so as to facilitate the making of tests and taking of samples¹⁰.

A person who fails to comply with any requirement imposed on him by these provisions or who, being required to furnish information, knowingly or recklessly furnishes information which is false in a material particular¹¹, is guilty of an offence¹².

Regulations have been made under the European Communities Act 1972¹³ giving inspectors powers to monitor for zoonoses and antimicrobial resistance to zoonotic agents and other agents that pose a threat to public health¹⁴, requiring food business operators involved in primary production to preserve isolates that have been tested for a zoonosis and to keep the results of those tests and provide them to the Secretary of State or the Welsh Ministers on demand¹⁵, and requiring the Secretary of State to consult Natural England and the Welsh Ministers to consult the Countryside Council for Wales in relation to any programme for the monitoring of zoonosis or zoonotic agents in wild animals which includes sampling of live wild animals or their nests or resting places¹⁶. The regulations are generally enforced by the local authority¹⁷. Various offences of obstructing an inspector, including that of administering any treatment to an animal with the intention of disguising any zoonosis or zoonotic agent, are created¹⁸.

Separate provision is made in relation to the control and eradication of certain transmissible spongiform encephalopathies¹⁹, and in relation to the control of avian influenza²⁰.

1 'Disease' is not here restricted by its definition in the Animal Health Act 1981: ss 29(1), 30(1).

2 'Animals' for this purpose includes poultry: Animal Health Act 1981 s 87(4). A zoonose is a disease which can be communicated from one kind of animal to another or to a human being.

3 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

- 4 Animal Health Act 1981 s 29(1). Bovine spongiform encephalopathy, salmonella and brucella have been so designated: Zoonoses Order 1988, SI 1988/2264 (amended by SI 1997/2964); Zoonoses Order 1989, SI 1989/285.
 - 5 Animal Health Act 1981 s 29(2)(a).
 - 6 Animal Health Act 1981 s 29(2)(b). For diseases to which the Act applies see PARA 1042.
 - 7 Animal Health Act 1981 s 29(3). As to designated diseases and organisms see note 4.
 - 8 Animal Health Act 1981 s 30(1).
 - 9 As to veterinary inspectors see PARA 1120.
 - 10 Animal Health Act 1981 s 30(2).
 - 11 As to the meaning of 'false in a material particular' see PARA 1086 note 7.
 - 12 Animal Health Act 1981 s 30(3). As to the penalties for offences against the Act see PARA 1101.
 - 13 See as required by EC Directive 2003/99 (OJ L325, 12.12.2003, p 31) (on the monitoring of zoonoses and zoonotic agents, amending EEC Council Decision 90/424 and repealing EEC Council Directive 92/117). See the Zoonoses (Monitoring) (England) Regulations 2007, SI 2007/2399; and the Zoonoses (Monitoring) (Wales) Regulations 2007, SI 2007/2459.
 - 14 See the Zoonoses (Monitoring) (England) Regulations 2007, SI 2007/2399, reg 4 (powers of entry). Inspectors may take samples on premises entered, examine records and make inquiries of any person: see reg 5. As to the position in Wales see the Zoonoses (Monitoring) (Wales) Regulations 2007, SI 2007/2459, regs 4, 5.
 - 15 See the Zoonoses (Monitoring) (England) Regulations 2007, SI 2007/2399, reg 6; and the Zoonoses (Monitoring) (Wales) Regulations 2007, SI 2007/2459, reg 6.
 - 16 See the Zoonoses (Monitoring) (England) Regulations 2007, SI 2007/2399, reg 7; and the Zoonoses (Monitoring) (Wales) Regulations 2007, SI 2007/2459, reg 7.
 - 17 See the Zoonoses (Monitoring) (England) Regulations 2007, SI 2007/2399, reg 8; and the Zoonoses (Monitoring) (Wales) Regulations 2007, SI 2007/2459, reg 10.
 - 18 See the Zoonoses (Monitoring) (England) Regulations 2007, SI 2007/2399, reg 9(1). A person guilty of an offence under the regulations is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 9(2). As to offences by bodies corporate see reg 10. As to the position in Wales and the Zoonoses (Monitoring) (Wales) Regulations 2007, SI 2007/2459, regs 8, 9. As to the standard scale see PARA 738 note 1.
 - 19 See the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228; the Transmissible Spongiform Encephalopathies (Wales) Regulations 2006, SI 2006/1226; and PARA 1071. Those regulations are made not under the Animal Health Act 1981, but under the European Communities Act 1972. See further **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1011 et seq.
 - 20 See the Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701; the Avian Influenza (Preventive Measures) (Wales) Regulations 2006, SI 2006/2803; the Avian Influenza (Vaccination) (Wales) Regulations 2006, SI 2006/1761; the Avian Influenza (H5N1 in Poultry) (England) Order 2006, SI 2006/3247 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006, SI 2006/3309 (amended by SI 2007/3375); the Avian Influenza (H5N1 in Wild Birds) (England) Order 2006, SI 2006/3249 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Wild Birds) (Wales) Order 2006, SI 2006/3310 (amended by SI 2007/3375); and PARAS 1102-1111. Those regulations are also made under the European Communities Act 1972.
- Provision has also been made in relation to surveys for salmonella prevalence in turkeys and pigs: see the Salmonella in Turkey Flocks and Slaughter Pigs (Survey Powers) (England) Regulations 2006, SI 2006/2821.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1044 Control of zoonoses

NOTE 19--SI 2006/1228 replaced: Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881. SI 2006/1226 replaced: Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2009/192).

NOTE 20--SI 2006/2701 amended: SI 2009/2712. SI 2006/2803 amended: SI 2010/619. See also the Control of Salmonella in Turkey Flocks Order 2009, SI 2009/3271; and the Control of Salmonella in Turkey Flocks (Wales) Order 2010, SI 2010/65.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(i) In general/1045. Animal pathogens.

1045. Animal pathogens.

No person may have in his possession a specified animal pathogen¹, or any carrier² in which he knows such a pathogen is present, nor deliberately introduce into any animal any such animal pathogen³, except under the authority of a licence⁴ issued by the Secretary of State or the Welsh Ministers⁵. If any person has in his possession any thing in which he has reasonable grounds for suspecting that a specified animal pathogen⁶ is present, and does not have a licence in respect of that pathogen, he must forthwith notify the Secretary of State or the Welsh Ministers⁷. Inspectors have extensive powers, including the power to seize, detain, treat or destroy pathogens or carriers⁸, and they may also issue improvement notices and prohibition notices⁹.

Provision is made controlling the importation of animal pathogens or carriers except under licence¹⁰.

1 le a pathogen specified in the Specified Animal Pathogens Order 2008, SI 2008/944, Sch 1 or the Specified Animal Pathogens (Wales) Order 2008, SI 2008/1270, Sch 1, including (1) intact pathogens; (2) pathogens which have been attenuated or genetically modified by any means; and (3) any nucleic acid derived from an animal pathogen listed in the Schedule which could produce that pathogen when introduced into a biological system in which the nucleic acid is capable of replicating: see the Specified Animal Pathogens Order 2008, SI 2008/944, art 3(1); and the Specified Animal Pathogens (Wales) Order 2008, SI 2008/1270, art 3(1). 'Animal' includes poultry: see the Specified Animal Pathogens Order 2008, SI 2008/944, art 3(1); and the Specified Animal Pathogens (Wales) Order 2008, SI 2008/1270, art 3(1).

2 'Carrier' means any living creature except man which may carry or transmit a specified animal pathogen or the tissue, cell culture, body fluid, excreta, carcase or part of a carcase of such creature by or by means of which a specified animal pathogen may be transmitted or carried: see the Specified Animal Pathogens Order 2008, SI 2008/944, art 3(1); and the Specified Animal Pathogens (Wales) Order 2008, SI 2008/1270, art 3(1).

3 le an animal pathogen specified in the Specified Animal Pathogens Order 2008, SI 2008/944, Sch 1 Pt 1 or Pt 2; or the Specified Animal Pathogens (Wales) Order 2008, SI 2008/1270, Sch 1 Pt 1 or Pt 2.

4 Such a licence must be in writing, may be subject to conditions and may be amended, suspended or revoked by notice in writing at any time: see the Specified Animal Pathogens Order 2008, SI 2008/944, art 3(3); and the Specified Animal Pathogens (Wales) Order 2008, SI 2008/1270, art 3(3). No person may contravene a licence condition imposed on that person: see the Specified Animal Pathogens Order 2008, SI 2008/944, art 10; and the Specified Animal Pathogens (Wales) Order 2008, SI 2008/1270, art 10.

5 See the Specified Animal Pathogens Order 2008, SI 2008/944, art 4(1), (2); and the Specified Animal Pathogens (Wales) Order 2008, SI 2008/1270, art 4(1), (2). There are exceptions in relation to (1) persons who transport, but have no rights in, an animal pathogen or carrier; (2) pathogens contained in medicines and veterinary medicinal products: see the Specified Animal Pathogens Order 1998, SI 1998/463, art 5; and the Specified Animal Pathogens (Wales) Order 2008, SI 2008/1270, art 5. The Specified Animal Pathogens Order 2008, SI 2008/944, is enforced by the Secretary of State: art 11. The Specified Animal Pathogens (Wales) Order 2008, SI 2008/1270, is enforced by the Welsh Ministers: art 11. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see *PARAS* 705-706.

6 le an animal pathogen specified in the Specified Animal Pathogens Order 2008, SI 2008/944, Sch 1 Pt 1; or the Specified Animal Pathogens (Wales) Order 2008, SI 2008/1270, Sch 1 Pt 1.

7 See the Specified Animal Pathogens Order 2008, SI 2008/944, art 4(3); and the Specified Animal Pathogens (Wales) Order 2008, SI 2008/1270, art 4(3).

8 See the Specified Animal Pathogens Order 2008, SI 2008/944, art 6, Sch 2; and the Specified Animal Pathogens (Wales) Order 2008, SI 2008/1270, art 6, Sch 2.

9 See the Specified Animal Pathogens Order 2008, SI 2008/944, arts 7, 8; and the Specified Animal Pathogens (Wales) Order 2008, SI 2008/1270, arts 7, 8. As to appeals against improvement and prohibition notices see the Specified Animal Pathogens Order 2008, SI 2008/944, art 9; and the Specified Animal Pathogens (Wales) Order 2008, SI 2008/1270, art 9.

10 See the Importation of Animal Pathogens Order 1980, SI 1980/1212 (amended by SI 1993/3250; SI 2006/2407).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1045 Animal pathogens

NOTES 1, 3, 8--SI 2008/944 Schs 1, 2 amended: SI 2009/3083.

NOTES 1, 3, 6--SI 2008/1270 Sch 1 Pt 1 amended: SI 2009/3234.

NOTE 8--SI 2008/1270 Sch 2 amended: SI 2009/3234.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(i) In general/1046. Biosecurity.

1046. Biosecurity.

The provisions concerning the biosecurity measures to be taken in relation to foot-and-mouth disease¹ apply also to any disease specified by order made by the Secretary of State or the Welsh Ministers².

¹ See the Animal Health Act 1981 ss 6A, 6B; and PARA 1059.

² Animal Health Act 1981 s 6A(1) (ss 6A, 6B added by the Animal Health Act 2002 s 16). The power to make an order must be exercised by statutory instrument subject, in relation to England, to annulment in pursuance of a resolution of either House of Parliament: Animal Health Act 1981 s 6A(9) (as so added). As to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. See the Avian Influenza and Newcastle Disease (Biosecurity Guidance and Disease Control (Slaughter) Protocol) (England and Wales) Order 2003, SI 2003/2035. See also the Avian Influenza (H5N1 in Wild Birds) (England) Order 2006, SI 2006/3249 (amended by SI 2007/3303); and the Avian Influenza (H5N1 in Wild Birds) (Wales) Order 2006, SI 2006/3310 (amended by SI 2007/3375). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

See also the Animal Health Act 1981 s 6A(10) (as so added), which validates anything done for the purposes of s 6A(1)-(3) before the passing of the Animal Health Act 2002.

The Animal Health Act 1981 ss 6A, 6B came into force on 1 July 2003: Animal Health Act 2002 (Commencement) Order 2002, SI 2002/3044.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(i) In general/1047. National contingency plan against the outbreak of disease.

1047. National contingency plan against the outbreak of disease.

The provisions concerning the preparation of a national contingency plan for dealing with an outbreak of foot-and-mouth disease¹ apply also to any disease specified by order made by the appropriate authority².

¹ See the Animal Health Act 1981 s 14A; and PARA 1060.

² Animal Health Act 1981 s 14A(1) (s 14A added by the Animal Health Act 2002 s 18). As to the appropriate authority see PARA 1060 note 1.

The power to make an order must be exercised by statutory instrument which, except in relation to a plan prepared in relation to Wales, is subject to annulment in pursuance of a resolution of either House of Parliament: Animal Health Act 1981 s 14A(6), (7), (9) (as so added). See the Avian Influenza and Newcastle Disease (Contingency Planning) (England) Order 2003, SI 2003/2036; and the Avian Influenza and Newcastle Disease (Contingency Planning) (Wales) Order 2005, SI 2005/2840. See also the Animal Health Act 1981 s 14A(10) (as so added), which validates anything done (except the making of an order specifying a disease) for the purposes of s 14A(1)-(3) before the passing of the Animal Health Act 2002.

The Animal Health Act 1981 s 14A came into force on 24 March 2003: Animal Health Act 2002 (Commencement) Order 2002, SI 2002/3044.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(i) In general/1048. Deliberate infection.

1048. Deliberate infection.

A person commits an offence if without lawful authority or excuse¹ he knowingly does anything which causes or is intended to cause an animal to be infected with a specified disease². A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both³.

If a person is convicted of such an offence the court may by order disqualify him, for such period as it thinks fit, from keeping or dealing in any animals, or alternatively in any animals of a specified kind⁴. A person so disqualified may from time to time apply⁵ to the court which imposed the disqualification to remove it or vary it⁶. In considering such an application the court may have regard to the nature of the offence in respect of which the disqualification was imposed, the character of the applicant, and his conduct since the disqualification was imposed⁷. The court may by order refuse the application, remove the disqualification, or vary the disqualification to apply it only to such animals or kind of animals as it specifies⁸.

¹ Proof of lawful authority or excuse lies on the accused: Animal Health Act 1981 s 28A(1) (ss 28A, 28B, Sch 2A added by the Animal Health Act 2002 s 12(1), (2)).

² Animal Health Act 1981 s 28A(1) (as added: see note 1). The following diseases are specified: Foot-and-mouth disease; Swine vesicular disease; Peste des petits ruminants; Lumpy skin disease; Bluetongue; African horse sickness; Classical swine fever; Newcastle disease; Vesicular stomatitis; Rinderpest; Contagious bovine pleuro-pneumonia; Rift Valley fever; Sheep pox and Goat pox; African swine fever; Highly pathogenic avian influenza: s 28A, Sch 2A (as so added). The Secretary of State or the Welsh Ministers may by order amend Sch 2A: s 28A(3) (as so added). As respects England, a statutory instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament: s 28A(4) (as so added). As to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. At the date at which this volume states the law, no order had been made under this provision. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see **PARAS 705-706**.

³ Animal Health Act 1981 s 28A(2) (as added: see note 1). As to the statutory maximum see **PARA 877** note 6.

⁴ Animal Health Act 1981 s 28B(1) (as added: see note 1). The court may suspend the operation of the order to enable arrangements to be made for the keeping of any animals to which the disqualification relates, and pending an appeal: see s 28B(2) (as so added).

'Keeping or dealing in an animal' includes having custody or control of an animal; and being concerned in the management or control of a body (whether or not incorporated) whose activities include keeping or dealing in animals: s 28B(8) (as so added).

⁵ The first such application may not be made before the end of the period of one year starting with the date the disqualification starts: Animal Health Act 1981 s 28B(6) (as added: see note 1). A further application must not be made before the end of the period of one year starting with the date of the court's last order: s 28B(7) (as so added).

⁶ Animal Health Act 1981 s 28B(3) (as added: see note 1).

⁷ Animal Health Act 1981 s 28B(5) (as added: see note 1).

⁸ Animal Health Act 1981 s 28B(4) (as added: see note 1).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(ii) Notice of Disease; Separation and Treatment/1049. Notice of disease.

(ii) Notice of Disease; Separation and Treatment

1049. Notice of disease.

Every person having in his possession or under his charge an animal affected with disease¹ must with all practicable speed give notice² that the animal is affected to a local police constable³, who must forthwith give information thereof to such person or authority as the Secretary of State or the Welsh Ministers⁴ may by order direct⁵. Orders may also be made containing requirements as to the notices to be given to or by various persons and authorities in the case of particular diseases⁶. In general, these orders require anyone with a diseased animal in his possession or under his charge, and any veterinary surgeon who examines such an animal in the course of his duties, to give notice of the fact forthwith to the divisional veterinary manager⁷.

A number of orders have been made taking effect fully or partially under the provisions described above⁸.

A person is guilty of an offence against the Animal Health Act 1981 who, without lawful authority or excuse⁹, fails where required by the Act or by an order of the Secretary of State or the Welsh Ministers to give notice of disease with all practicable speed¹⁰.

Separate provision is made in relation to the control and eradication of certain transmissible spongiform encephalopathies¹¹.

1 As to the meaning of 'animal' and 'disease' see PARAS 1041, 1042.

2 The burden of proof is on the accused to show that he gave the notice, not on the prosecution to show that he did not: *Huggins v Ward* (1873) LR 8 QB 521. That burden is discharged on a balance of probabilities: see *R v Carr-Briant* [1943] KB 607, [1943] 2 All ER 156, CCA, and *R v Dunbar* [1958] 1 QB 1, [1957] 2 All ER 737, CCA. The accused must know the animal was diseased (*Nichols v Hall* (1873) LR 8 CP 322; and cf *Carroll v Ewers* (1873) IR 7 CL 226); but knowledge is presumed unless he shows to the court's satisfaction that he had no knowledge and could not with reasonable diligence have obtained it: Animal Health Act 1981 s 79(2). See also *Maclean v Laidlaw* 1909 SC 68; *Wilson v Yates* (1927) 91 JP 188, 44 TLR 25.

3 Animal Health Act 1981 s 15(1)(b).

4 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

5 Animal Health Act 1981 s 15(3).

6 See the Animal Health Act 1981 s 15(4).

7 As to veterinary inspectors and managers see PARA 1120.

For the exact requirements as to notification see the various orders listed in note 8. If a veterinary surgeon or veterinary practitioner notifies a local authority of disease in pursuance of an order under the Act requiring such notification, he is to be paid the fee (expressed not to exceed 12p) prescribed in the order: Animal Health Act 1981 s 15(6). As to veterinary surgeons and practitioners see PARAS 1133-1134.

8 See the Animals (Miscellaneous Provisions) Order of 1927, SR & O 1927/290 (amended by SR & O 1938/197; SI 1953/37; SI 1953/38; SI 1959/1335; SI 1976/919; SI 1992/1361); the Cattle Plague Order of 1928, SR & O 1928/206 (amended by SR & O 1938/194; SI 1977/944); the Pleuro-Pneumonia Order of 1928, SR & O 1928/205 (amended by SR & O 1938/195; SI 1977/944); the Foot-and-Mouth Disease (Infected Areas) (Vaccination) Order 1972, SI 1972/1509; the Warble Fly (England and Wales) Order 1982, SI 1982/234 (amended by SI 1985/328; SI 1994/3142; and SI 2006/2407); the Aujeszky's Disease Order 1983, SI 1983/344

(amended by SI 1994/3141; SI 1995/11; SI 1995/2922); the Foot-and-Mouth Disease Order 1983, SI 1983/1950; the Infectious Diseases of Horses Order 1987, SI 1987/790 (amended by SI 1992/3159; SI 1995/2922); the Zoonoses Order 1988, SI 1988/2264 (amended by SI 1997/2964); the Tuberculosis (Deer) Order 1989, SI 1989/878 (amended by SI 1993/2010; SI 1995/2922); the Anthrax Order 1991, SI 1991/2814 (amended by SI 1995/2922; SI 1996/1855); the Equine Viral Arteritis Order 1995, SI 1995/1755 (amended by SI 1995/2922); the Specified Diseases (Notification) Order 1996, SI 1996/2628 (amended by SI 1998/1645; SI 2006/2166; and SI 2006/2237); the Sheep Scab Order 1997, SI 1997/968; the Brucellosis (England) Order 2000, SI 2000/2055 (amended by SI 2008/618); the Enzootic Bovine Leukosis (England) Order 2000, SI 2000/2056; the Classical Swine Fever (England) Order 2003, SI 2003/2329; the Classical Swine Fever (Wales) Order 2003, SI 2003/2456; the African Swine Fever (England) Order 2003, SI 2003/2913; the African Swine Fever (Wales) Order 2003, SI 2003/3273; the Foot-and-Mouth Disease (Wales) Order 2006, SI 2006/179; the Foot-and-Mouth Disease (England) Order 2006, SI 2006/182; the Brucellosis (Wales) Order 2006, SI 2006/866; the Enzootic Bovine Leukosis (Wales) Order 2006, SI 2006/867; the Tuberculosis (England) Order 2007, SI 2007/740; the Tuberculosis (Wales) Order 2006, SI 2006/1053; the Specified Diseases (Notification and Slaughter) Order 2006, SI 2006/2166; the Specified Diseases (Notification and Slaughter) (Wales) Order 2006, SI 2006/2237; the Avian Influenza and Influenza of Avian Origin in Mammals (England) (No 2) Order 2006, SI 2006/2702; the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006, SI 2006/2927; the Avian Influenza (H5N1 in Wild Birds) (England) Order 2006, SI 2006/3249 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Wild Birds) (Wales) Order 2006, SI 2006/3310 (amended by SI 2007/3375); the Tuberculosis (England) Order 2007, SI 2007/740; the Bluetongue (No 2) Order 2007, SI 2007/3304 (amended by SI 2008/962); and the Bluetongue (No 2) (Wales) Order 2007, SI 2007/3309 (amended by SI 2008/1090).

9 Proof of lawful authority or excuse lies on the accused: Animal Health Act 1981 s 15(7).

10 Animal Health Act 1981 s 15(7)(b).

11 See the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228; the Transmissible Spongiform Encephalopathies (Wales) Regulations 2006, SI 2006/1226; and PARA 1071. Those regulations are made not under the Animal Health Act 1981, but under the European Communities Act 1972.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1049 Notice of disease

TEXT AND NOTE 7--Post of divisional veterinary manager abolished: see PARA 1120.

NOTE 8--SI 1983/344, SI 1987/790, SI 1991/2814, SI 1996/2628, SI 2007/740 amended: see PARA 1041. SI 1989/878, SI 2003/2329 amended: SI 2009/2713 (England). SI 1995/1755, SI 2003/2913 amended: see PARA 1042. SI 2000/2055, SI 2000/2056 amended: see PARA 1043. SI 2006/182, SI 2006/2702 amended: see PARA 868. SI 2006/1053 replaced: Tuberculosis (Wales) Order 2010, SI 2010/1379.

NOTE 11--SI 2006/1228 replaced: Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881. SI 2006/1226 replaced: Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2009/192).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(ii) Notice of Disease; Separation and Treatment/1050. Information as to diseased animals.

1050. Information as to diseased animals.

Every person who has or has had in his possession or under his charge any animal¹ affected with or suspected of disease², or any animal which has been in any way in contact with such an animal, or who, being an auctioneer, has sold or offered for sale any such animal, must, if required in writing by the Department for the Environment, Food and Rural Affairs, the local authority³ or an inspector, give all information in his possession as to the animal and its movements and the persons through or into whose hands it has passed⁴. Refusal to give information or the giving of false information is an offence under the Animal Health Act 1981⁵.

1 'Animal' in this context means cattle, sheep, goats, all other ruminating animals, swine, horses, asses, mules, dogs and other canine animals: Animals (Miscellaneous Provisions) Order of 1927, SR & O 1927/290, art 1.

2 'Disease' includes any disease which is by order declared to be a disease for the purposes of the Animal Health Act 1981 (see PARA 1042): Animals (Miscellaneous Provisions) Order of 1927, SR & O 1927/290, art 12(2).

3 As to local authorities see PARA 1121.

4 Animals (Miscellaneous Provisions) Order of 1927, SR & O 1927/290, art 12(1). See also PARA 1044 text and notes 7-8. As to the exercise of central government functions see PARA 705.

5 Animals (Miscellaneous Provisions) Order of 1927, SR & O 1927/290, art 12(1). As to such offences see PARAS 1100-1101.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(ii) Notice of Disease; Separation and Treatment/1051. Separation and treatment.

1051. Separation and treatment.

Every person having in his possession or under his charge an animal affected with disease¹ must as far as practicable keep it separate from animals not so affected².

For the purpose of preventing the spread of disease the Secretary of State or the Welsh Ministers³ may cause to be treated with serum or vaccine or both any animal or bird which has been in contact with a diseased animal or bird or which appears to him to be or to have been exposed to the infection of disease, or which is in an infected area⁴. These powers extend to the taking of any action necessary for enabling the appropriate treatment to be administered or which is otherwise required in connection with such treatment, and for the purpose of exercising them any inspector may, subject to producing his authority on demand, enter any land or premises⁵.

A justice of the peace may issue a warrant authorising an inspector to enter any land or premises for that purpose, if he is satisfied on sworn information⁶ in writing that the condition in head (1) below is satisfied, and either the condition in head (2) or the condition in head (3) is satisfied⁷. Those conditions are that:

- 220 (1) there are reasonable grounds for an inspector to enter the land or premises for that purpose⁸;
- 221 (2) the occupier of the premises (a) has been informed of the decision to seek entry to the premises and of the reasons for that decision; (b) has failed to allow entry to the premises on being requested to do so by an inspector; and (c) has been informed of the decision to apply for the warrant⁹;
- 222 (3) either (a) the premises are unoccupied or the occupier is absent and (in either case) notice of intention to apply for the warrant has been left in a conspicuous place on the premises; or (b) an application for admission to the premises or the giving of notice of intention to apply for the warrant would defeat the object of entering the premises¹⁰.

The warrant may authorise the use, if necessary, of reasonable force¹¹.

Where an inspector enters any land or premises by virtue of any of the provisions described above, he may take with him such other persons as he thinks necessary to give him such assistance as he thinks necessary, and such equipment as he thinks necessary¹². He may require any person on the land or premises who is the occupier, who appears to have charge of animals on the premises, or who appears to be under the direction or control of the occupier or such a person, to give him such assistance as he may reasonably require¹³. If he enters any unoccupied premises he must leave them as effectively secured against entry as he found them¹⁴.

1 As to the meanings of 'animal' and 'disease' see PARAS 1041, 1042.

2 Animal Health Act 1981 s 15(1)(a). See also PARAS 1076-1077.

A person is guilty of an offence against the Animal Health Act 1981 who, without lawful authority or excuse, fails where required by the Act or by an order of the Secretary of State or the Welsh Ministers to give notice of disease with all practicable speed: s 15(7)(a). Proof of lawful authority or excuse lies on the accused: s 15(7).

3 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

4 Animal Health Act 1981 s 16(1). As to infected areas see PARA 1072. See the Foot-and-Mouth Disease (Infected Areas) (Vaccination) Order 1972, SI 1972/1509. See also the Foot-and-Mouth Disease (Control of Vaccination) (England) Regulations 2006, SI 2006/183; the Foot-and-Mouth Disease (Control of Vaccination) (Wales) Regulations 2006, SI 2006/180; and PARA 1063.

See also the Avian Influenza (Vaccination) (Wales) Regulations 2006, SI 2006/1761, made under the European Communities Act 1972 s 2(2), but applying the provisions of the Animal Health Act 1981 s 16.

5 Animal Health Act 1981 s 16(2) (amended by the Animal Health Act 2002 s 7(1)-(3)).

6 The information must include (1) a statement as to whether any representations have been made by the occupier of the land or premises to an inspector concerning the purpose for which the warrant is sought; and (2) a summary of any such representations: Animal Health Act 1981 s 16(4) (s 16(3)-(17) added by the Animal Health Act 2002 s 7(4)).

7 Animal Health Act 1981 s 16(3) (as added: see note 6). If the inspector enters any premises by virtue of such a warrant he must, at the time of entry, serve a copy of the warrant on the occupier of the premises, or (if the occupier is not on the premises) leave a copy of it in a conspicuous place on the premises: s 16(13) (as so added).

A warrant remains in force for one month starting with the date of its approval by the justice of the peace; and the date must be clearly visible on the warrant: s 16(14) (as so added). It must be executed only at a reasonable hour unless the inspector thinks that the case is one of urgency: s 16(15) (as so added).

In relation to any premises to which entry is obtained by virtue of a warrant the Secretary of State or the Welsh Ministers must retain for a period of not less than 12 months (beginning with the day after entry) a copy of the warrant, and a copy of any record of the steps taken to effect entry to the premises and the actions taken on the premises by the inspector and any other person entering the premises with him: s 16(16) (as so added).

8 Animal Health Act 1981 s 16(5) (as added: see note 6).

9 Animal Health Act 1981 s 16(6) (as added: see note 6).

10 Animal Health Act 1981 s 16(7) (as added: see note 6).

11 Animal Health Act 1981 s 16(3) (as added: see note 6).

12 Animal Health Act 1981 s 16(8), (9) (as added: see note 6).

13 Animal Health Act 1981 s 16(10), (11) (as added: see note 6). A person commits an offence if he is required to give assistance under s 16(10), and fails to give it: s 16(17) (as so added). As to the penalties for offences against the Act see PARA 1101.

14 Animal Health Act 1981 s 16(12) (as added: see note 6).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1051 Separation and treatment

NOTE 4--SI 2006/183 amended: SI 2009/2712.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(ii) Notice of Disease; Separation and Treatment/1052. Cleansing and disinfection.

1052. Cleansing and disinfection.

The Secretary of State or the Welsh Ministers¹ may make such orders² as they think fit for (1) prescribing and regulating the cleansing and disinfection of places used for the holding of markets, fairs, exhibitions or sales of animals, or for lairage of animals, and yards, sheds, stables and other places used for animals³; (2) prescribing and regulating the cleansing and disinfection of vessels, aircraft, vehicles and pens and other places, used for the carrying of animals for hire or connected purposes⁴; (3) prescribing and regulating the disinfection of the clothes of persons coming in contact with or employed about diseased or suspected animals and the use of precautions against the spreading of disease by such persons⁵; and (4) prescribing modes of cleansing and disinfection⁶.

If a person is charged with an offence against the Animal Health Act 1981 in not having duly cleansed or disinfected any place, vessel, aircraft, vehicle or thing of his or in his charge, and a presumption is raised against him by the prosecution, it is for him to prove that the cleansing and disinfection was carried out⁷.

Separate provision is made in relation to the control and eradication of certain transmissible spongiform encephalopathies⁸.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 General orders taking effect wholly or partly under the Animal Health Act 1981 s 7 are: the Animals (Miscellaneous Provisions) Order of 1927, SR & O 1927/290 (amended by SR & O 1936/1297; SR & O 1938/197; SI 1953/37; SI 1953/38; SI 1959/1335; SI 1974/1185; SI 1976/919; SI 1992/1361); the Importation of Animals Order 1977, SI 1977/944 (amended by SI 1990/2371; SI 1992/1361; SI 1992/3159; SI 1995/2922; SI 1996/1760; SI 2000/1618; SI 2000/1673; SI 2001/2662); the Zoonoses Order 1988, SI 1988/2264 (amended by SI 1997/2964); the Zoonoses Order 1989, SI 1989/285; the Animals (Post-Import Control) Order 1995, SI 1995/2439; the Specified Animal Pathogens Order 2008, SI 2008/944; the Rendering (Fluid Treatment) (England) Order 2001, SI 2001/1515; the Animal Gatherings (Interim Measures) (England) Order 2003, SI 2003/253; the Animal Gatherings (Interim Measures) (Wales) Order 2003, SI 2003/481; the Transport of Animals (Cleansing and Disinfection) (Wales) Order 2003, SI 2003/482; the Disease Control (England) Order 2003, SI 2003/1729 (amended by SI 2006/182; SI 2008/1066); the Disease Control (Wales) Order 2003, SI 2003/1966 (amended by SI 2006/179; SI 2008/1314); the Transport of Animals (Cleansing and Disinfection) (England) (No 3) Order 2003, SI 2003/1724 (amended by SI 2006/3260, SI 2007/1020); the Transport of Animals (Cleansing and Disinfection) (Wales) (No 3) Order 2003, SI 2003/1968 (amended by SI 2008/789); the Animal Gatherings (England) Order 2004, SI 2004/1202; the Animal Gatherings (Wales) Order 2003, SI 2004/1803; Pigs (Records, Identification and Movement) (Wales) Order 2004, SI 2004/996; the Pigs (Records, Identification and Movement) Order 2007, SI 2007/642 (England).

See also the Diseases of Animals (Approved Disinfectants) (England) Order 2007, SI 2007/448; and the Diseases of Animals (Approved Disinfectants) (Wales) Order 2007, SI 2007/2803, made under the Animal Health Act 1981 s 1.

For orders which relate to particular kinds of animal, or particular diseases, see: the Pleuro-Pneumonia Order of 1928, SR & O 1928/205 (amended by SR & O 1938/195; SI 1977/944); the Cattle Plague Order of 1928, SR & O 1928/206 (amended by SR & O 1938/194; SI 1977/944); the Psittacosis or Ornithosis Order 1953, SI 1953/38; the Export of Horses (Protection) Order 1969, SI 1969/1784; the Swine Vesicular Disease Order 1972, SI 1972/1980 (amended by SI 1973/101; SI 1977/944; SI 1993/3119); the Importation of Birds, Poultry and Hatching Eggs Order 1979, SI 1979/1702 (amended by SI 1990/2371; SI 1996/3124; SI 2000/1673); the Aujeszky's Disease Order 1983, SI 1983/344 (amended by SI 1994/3141; SI 1995/11; SI 1995/2922); the Tuberculosis (England and Wales) Order 1984, SI 1984/1943 (amended by SI 1990/1869; SI 1995/2922); the Infectious Diseases of Horses Order 1987, SI 1987/790 (amended by SI 1992/3159; SI 1995/2922); the Tuberculosis (Deer) Order 1989, SI 1989/878 (amended by SI 1993/2010; SI 1995/2922); the Anthrax Order 1991, SI 1991/2814 (amended by SI 1995/2922; SI 1996/1855); the Poultry Breeding Flocks and Hatcheries Order 1993, SI 1993/1989; the Pigs (Records, Identification and Movement) Order 1995, SI 1995/11 (amended

by SI 1995/2922; SI 2000/1618; SI 2001/2662); the Bovine Animals (Records, Identification and Movement) Order 1995, SI 1995/12 (amended by SI 1995/2922; SI 1998/871); the Sheep Scab Order 1997, SI 1997/968; the Brucellosis (England) Order 2000, SI 2000/2055 (amended by SI 2008/618); the Enzootic Bovine Leukosis (England) Order 2000, SI 2000/2056; the Diseases of Poultry (England) Order 2003, SI 2003/1078 (amended by SI 2006/1197); the Diseases of Poultry (Wales) Order 2003, SI 2003/1079 (amended by SI 2006/1762); the Classical Swine Fever (England) Order 2003, SI 2003/2329; the Classical Swine Fever (Wales) Order 2003, SI 2003/2456; the African Swine Fever (England) Order 2003, SI 2003/2913; the African Swine Fever (Wales) Order 2003, SI 2003/3273; the Foot-and-Mouth Disease (England) Order 2006, SI 2006/182; the Foot-and-Mouth Disease (Wales) Order 2006, SI 2006/179; the Brucellosis (Wales) Order 2006, SI 2006/866; the Enzootic Bovine Leukosis (Wales) Order 2006, SI 2006/867; the Tuberculosis (Wales) Order 2006, SI 2006/1053; the Tuberculosis (England) Order 2007, SI 2007/740; the Avian Influenza and Influenza of Avian Origin in Mammals (England) (No 2) Order 2006, SI 2006/2702; the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006, SI 2006/2927; the Avian Influenza (H5N1 in Poultry) (England) Order 2006, SI 2006/3247 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006, SI 2006/3309 (amended by SI 2007/3375); the Avian Influenza (H5N1 in Wild Birds) (England) Order 2006, SI 2006/3249 (amended by SI 2007/3303); and the Avian Influenza (H5N1 in Wild Birds) (Wales) Order 2006, SI 2006/3310 (amended by SI 2007/3375).

See also the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260.

3 Animal Health Act 1981 s 7(1)(a).

4 Animal Health Act 1981 s 7(1)(b). As to the meaning of 'vessel' see PARA 868 note 3.

5 Animal Health Act 1981 s 7(1)(c).

6 Animal Health Act 1981 s 7(1)(d). As to the power of a veterinary inspector in certain circumstances to require the cleansing and disinfection of premises see the Movement of Animals (Restrictions) (England) Order 2002, SI 2002/3229; and the Movement of Animals (Restrictions) (Wales) Order 2003, SI 2003/399.

7 Animal Health Act 1981 s 79(3). See also text to note 4.

8 See the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228; the Transmissible Spongiform Encephalopathies (Wales) Regulations 2006, SI 2006/1226; and PARA 1071. Those regulations are made not under the Animal Health Act 1981, but under the European Communities Act 1972.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1052 Cleansing and disinfection

NOTE 2--SI 1972/1980 (as amended) replaced by Swine Vesicular Disease Regulations 2009, SI 2009/1299 (England); Swine Vesicular Disease (Wales) Regulations 2009, SI 2009/1372: see PARA 1042. SI 1983/344, SI 1987/790, SI 1991/2814, SI 2007/740 amended: see PARA 1041. SI 1989/878 further amended: see PARA 1049. SI 2000/2055, SI 2000/2056 amended: see PARA 1043. SI 2003/1078 further amended: SI 2009/2713. SI 2003/2329 amended: see PARA 1049. SI 2003/2913, SI 2008/944 amended: see PARA 1042. SI 2004/996 replaced: Pigs (Records, Identification and Movement) Order 2008, SI 2008/1742. SI 2006/1053 replaced: Tuberculosis (Wales) Order 2010, SI 2010/1379.

NOTE 6--SI 2003/399 amended: see PARA 1041.

NOTE 8--SI 2006/1228 replaced: Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881. SI 2006/1226 replaced: Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2009/192).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(ii) Notice of Disease; Separation and Treatment/1053. Dipping against sheep scab.

1053. Dipping against sheep scab.

The Secretary of State or the Welsh Ministers¹ may make orders² for prescribing, regulating and securing the periodical treatment of all sheep by effective dipping³ or by the use of some other remedy for sheep scab⁴. Inspectors of the Secretary of State or the Welsh Ministers and, if so authorised⁵, local authority inspectors⁶ may, for the purposes of any such order, enter any premises and examine sheep there⁷, and the owner and person in charge of the sheep must comply with the inspector's reasonable requirements as to the collection and penning of the sheep and afford all other reasonable facilities for their examination⁸.

Local authorities may provide, fit up, and maintain portable dipping tanks or dipping places, for use by the public on such terms and conditions as the authority thinks fit⁹. But no such dipping place may be used if the water in any stream, reservoir or other place constructed or used for the supply of water for drinking or other domestic purposes would thereby be injuriously affected¹⁰.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 See the Sheep Scab Order 1997, SI 1997/968.

3 Where an order makes it an offence to fail to dip sheep in an approved sheep dip within a certain period, a conviction for not dipping sheep in an approved dip on a particular day in that period is bad as disclosing no offence: *Bingley v Quest* (1907) 97 LT 394.

4 Animal Health Act 1981 s 14(1).

5 Orders giving such authorisations are not statutory instruments: Animal Health Act 1981 s 91(5)(a).

6 As to local authority inspectors see PARA 1122.

7 Animal Health Act 1981 s 14(2).

8 Animal Health Act 1981 s 14(3).

9 Animal Health Act 1981 s 56(1). Any sums received by the authority must be applied towards the discharge of its expenses under the Act: s 56(2).

10 Animal Health Act 1981 s 56(3).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(iii) Rabies/1054. Rabies: importation and quarantine.

(iii) Rabies

1054. Rabies: importation and quarantine.

The Secretary of State or the Welsh Ministers¹ may by orders make such provision as they think fit for the purpose of preventing the introduction of rabies into Great Britain, and such orders may include provision for the destruction by prescribed persons of affected animals². They may also make orders requiring mammals which may be carriers of rabies to be kept in quarantine in such cases, for such periods and under such conditions as they may prescribe³, and prohibiting or regulating the importation of rabies virus in any form⁴. Under those powers, an order has been made⁵ controlling the landing from abroad⁶ of any animal belonging to certain orders of mammals⁷.

A licence⁸ from the Secretary of State is required before such an animal may be landed⁹ in Great Britain¹⁰. Similarly, a licence is required for the landing of an animal from a place other than a country outside Great Britain¹¹, if while outside Great Britain that animal has been or may have been in contact with an animal for the landing of which a licence would be required¹². Except where otherwise provided, the provisions are to be executed and enforced by the local authority¹³.

Only specified entry points¹⁴ may be used for the landing of animals, although in exceptional circumstances the licence, and in emergencies an inspector¹⁵, may permit landing at another port or airport¹⁶. Any terms or conditions subject to which the licence was granted must be complied with¹⁷, and immediately after being landed the animal must be detained and isolated¹⁸ in quarantine at its owner's expense at such premises and subject to such conditions as may be specified in the licence¹⁹. Only premises authorised by a licence granted by the Secretary of State and under the supervision of a veterinary surgeon (or, in the case of research premises only, a registered medical practitioner) authorised in writing by the Secretary of State may be used for detention and isolation in quarantine²⁰. During the quarantine period every dog or cat must be vaccinated against rabies at its owner's expense, unless the Secretary of State is satisfied that a dog or cat has been brought to Great Britain for use at research premises in connection with scientific research and that vaccination might interfere with the research²¹.

Upon landing, the person in charge of the animal must ensure that it is either (1) handed over to the authorised carrying agent²², who must forthwith remove it to the quarantine premises specified in the licence²³; or (2) immediately removed by an authorised carrying agent to premises within or in the vicinity of the port or airport approved for the temporary accommodation of animals for quarantine²⁴. Whilst in quarantine an animal may not be moved from the authorised quarantine premises except to other such premises, save for the purposes of treatment of a kind which cannot be administered at such premises²⁵.

The requirements of a licence and quarantine do not apply where satisfactory arrangements have previously been made for the exportation, within 48 hours of its landing, of an animal from the port or airport at which it was landed, or where the Secretary of State has granted a licence (which may be general or specific) for the landing of an animal and its subsequent transit through Great Britain to a port or airport for exportation²⁶.

If an animal which is required to be detained and isolated in quarantine is not so detained and isolated, or there is reason to believe that an animal has been landed in Great Britain in contravention of these provisions or of a licence, an inspector may by written or oral notice

served on the person appearing to him to be in charge of the animal, require that person immediately to detain and isolate the animal and, within the time specified in the notice, to ensure that it is moved to a vessel, vehicle or aircraft for exportation or to authorised quarantine premises²⁷. If a notice is not complied with, an inspector or a constable may seize or cause to be seized the animal to which the notice relates and arrange for the notice to be complied with²⁸. If the inspector reasonably believes that such an animal does not have an owner, or he is unable, after reasonable inquiry, to trace the owner or any person otherwise having charge of it, or he reasonably believes that the service of a notice would result in unreasonable delay in dealing with the animal, he may seize the animal or cause it to be seized, and arrange for its exportation or detention and isolation²⁹. An inspector or constable may seize or cause to be seized, and thereafter destroy or cause to be destroyed, any animal landed in Great Britain in contravention of these provisions or of a licence, or any animal in respect of which, after it has been landed, there is a contravention of a licence³⁰.

Any person landing or attempting to land in Great Britain an animal the landing of which is prohibited, or causing or permitting such landing or attempted landing, or contravening or failing to comply with the provisions described above, a licence or a notice, or causing or permitting such contravention or non-compliance, is guilty of an offence³¹. A person who knowingly and with intent to evade any provision of the order or of a licence (a) lands or attempts to land an animal in Great Britain the landing of which is prohibited or causes or permits the landing or attempted landing of any such animal; or (b) lands or attempts to land an animal in Great Britain in contravention of the order or of a licence or fails to comply with any such provision, or causes or permits any such contravention or non-compliance; or (c) with respect to an animal which has been landed in Great Britain, does or omits to do anything in relation to the detention and isolation in quarantine of the animal in contravention of any of the provisions described above or of a licence, commits an offence against the Animal Health Act 1981 and is liable to prosecution on indictment and on conviction to a fine or imprisonment for a term not exceeding 12 months, or to both³².

A person who lands or attempts to land an animal in Great Britain in contravention of the provisions described above or of a licence is also liable to be dealt with under the Customs and Excise Management Act 1979 for improperly importing or attempting to import goods, and the animal may be seized or detained as liable to forfeiture³³.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 Animal Health Act 1981 s 10(1), (5). As to the meaning of 'Great Britain' see PARA 830 note 21.

3 Animal Health Act 1981 ss 1, 24(a). The Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211 (amended by SI 1977/361; SI 1984/1182; SI 1986/2062; SI 1990/2371; SI 1993/1813; SI 1994/1405; SI 1994/1716; SI 1995/2922; SI 1999/3443 (England); SI 2000/1298 (England); SI 2000/1641 (England); SI 2001/6 (England); SI 2002/882 (Wales); and SI 2004/2364 (England)), has effect partly under these sections and partly under the Animal Health Act 1981 s 10, by virtue of the Interpretation Act 1978 s 17(2)(b). That order is disapplied in relation to imports from another member state of the European Community or other specified countries, in certain circumstances: see, in relation to England, the Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 35, Sch 9 (reg 35 substituted by SI 2007/1621), and, in relation to Wales, the Animals and Animal Products (Import and Export) (Wales) Regulations 2006, SI 2006/1536, reg 35, Sch 9 (reg 35 substituted by SI 2007/1627). It is also disapplied in relation to animals brought into England in accordance with the provisions of EC Parliament and Council Regulation 998/2003 (OJ L146, 13.6.2003, p 1) and the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363 (see PARA 1055): Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 4B (added by SI 1999/3443; and substituted by SI 2004/2364 (England)).

Animals or contact animals that have come into contact with animals which fall to be dealt with under the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, may themselves become subject to that order: see art 15 (amended by SI 1984/1182). 'Contact animal' means an animal belonging to any of the orders of mammals specified in the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, Sch 1 Pt III: art 2(1).

4 Animal Health Act 1981 ss 1, 24(b). The importation of rabies virus except under licence is prohibited by the Specified Animal Pathogens Order 2008, SI 2008/944.

5 le the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211; see note 3.

6 A licence is not required in respect of an animal brought from a place in Northern Ireland, the Republic of Ireland, the Channel Islands or the Isle of Man: Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 4(2). However, in relation to England, where the animal has been brought to that place from a place outside those countries (other than a place in Great Britain), the prohibition on landing does apply unless where landing in England, it is an animal which was imported into one of those countries from another member state or Norway subject to and in accordance with EEC Council Directive 92/65 (OJ L268, 14.9.1992, p 54) or in any other case it has been detained and isolated in quarantine for a period of at least six calendar months before being landed in Great Britain: art 4(2) proviso (substituted by SI 1994/1716; and amended by SI 2004/2364 (England)). Otherwise, where the animal has been brought to that place from a place outside those countries (other than a place in Great Britain), the prohibition on landing does apply unless it is a cat or dog which was subject to a commercial transaction and was imported into one of those countries from another member state or Norway, or the animal has been detained and isolated in quarantine for a period of at least six calendar months before being landed in Great Britain: Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 4(2) proviso (substituted by SI 1994/1716; and amended by SI 2000/1298). As to the meaning of 'licence' see note 8. The prohibition on landing does not apply to an animal which has been brought into England from Northern Ireland, the Republic of Ireland, the Channel Islands or the Isle of Man if it was admitted to that country in accordance with EC Parliament and Council Regulation 998/2003 (OJ L146, 13.6.2003, p 1) and which satisfies certain conditions: see the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 4(2A) (added by SI 2000/1298; and substituted by 2004/2364 (England)).

If the Secretary of State has reason to believe that there is an outbreak of rabies in one of the countries referred to in the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 4(2), and it appears to him to be necessary to act as a matter of urgency for the purpose of preventing the introduction of that disease into Great Britain, he may issue a temporary direction that art 4(1) is to apply to animals brought to Great Britain from that country: see art 4(6), (7).

7 Ten classes are specified, namely: *carnivora*, *chiroptera*, *dermoptera*, *edentata*, *hyracoidea*, *insectivora*, *lagomorpha*, *marsupialia*, *primates* and *rodentia*; man is excluded. The definition of 'animals' in the Animal Health Act 1981 (see PARA 1041) is accordingly extended: Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 3, Sch 1 Pt II.

8 'Licence' includes any permit, approval or other form of authorisation: Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 2(1).

9 An animal is deemed to have been landed immediately it is unloaded or taken out of or in any other manner leaves or escapes from, a vessel or aircraft, or immediately it is brought into a control zone in France: see the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 2(2) (amended by SI 1990/2371; SI 1993/1813; and, as from a day to be appointed, SI 1994/1405, adding a reference to a control zone in Belgium). See also note 27. 'Control zone' has the same meaning as in the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, and (as from a day to be appointed) the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405: Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 2(1A) (added by SI 1993/1813; substituted as from a day to be appointed by SI 1994/1405). At the date at which this volume states the law, no such day had been appointed.

As to the control of animals on vessels in harbour see the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 12 (substituted by SI 1977/361; amended by SI 1994/1716).

10 Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 4(1), (3). Exception is made in relation to the importation into England from another member state (other than the Republic of Ireland) of animals to which EEC Council Directive 92/65 (OJ L 268, 14.9.1992, p 54) laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A (I) to EEC Directive 90/425 (OJ L224, 18.8.1990, p 29) concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market and the Animal and Animal Products (Import and Export) Regulations 2004, SI 2004/853 (see PARA 1083), apply and which are imported in accordance with those Regulations: Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 4A (added by SI 1994/1716; substituted by SI 2004/2364 (England)). See *Corpn of London v Eurostar plc* [2004] EWHC 187 (Admin), (2005) 169 JP 263 (respondent was liable for 'landing' animal even though a third party had physically brought the animal into the United Kingdom).

11 Eg an oil rig not forming part of any country.

12 Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1994/2211, art 4(9) (art 4(9), (10) added by SI 1984/1182); this does not, however, apply to a dog belonging to the police, Her Majesty's Revenue and Customs or Her Majesty's Forces which is kept under the control of a trained handler while outside Great Britain: Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 4(10) (as so added; amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

13 Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 18. As to the meaning of 'local authority' see the Animal Health Act 1981 s 50; and PARA 1121.

14 Certain ports are specified, namely (1) Dover, Eastern Docks; (2) Harwich, Parkeston Quay; (3) Hull; (4) Portsmouth; and (5) Southampton. Similarly, certain airports are also specified: (a) Birmingham; (b) Edinburgh; (c) Gatwick; (d) Glasgow; (e) Heathrow; (f) Leeds; (g) Manchester; and (h) Prestwick: Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 4(4), Sch 2 (Sch 2 substituted by SI 1984/1182; Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, Sch 2 Pt I amended by SI 1986/2062; Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, Sch 2 Pt II amended by SI 1986/2062; and SI 2004/2364). Notwithstanding this, animals may also be brought into England at Cheriton, through the Channel Tunnel: Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 4(4B) (added by SI 1999/3443, in relation to the importation of pet cats and pet dogs into England only).

15 Ie an inspector appointed by the Secretary of State or a local authority for the purposes of the Animal Health Act 1981, including, in the former case, a veterinary inspector: Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 2(1). As to the appointment of inspectors see PARAS 1120, 1122.

16 Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 4(4), (5). Article 4(4) does not have effect in relation to the landing in Great Britain of an animal to which art 4(2) (see note 6) applies unless that animal is one referred to in art 4(2) proviso: art 4(4A) (added by SI 1977/361).

17 Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 4(3).

18 The Secretary of State may by licence permit two or more animals to be kept together in quarantine, in which case the period of six months (see note 19) is computed, for all the animals so kept, from the latest date of landing of any of the animals: Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 5(3).

19 Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 5(1), (2). In most cases the period of quarantine is six months: art 5(2), Sch 1 Pt II. In the case of vampire bats (*desmontidae*, of the order *chiroptera*) the period is the life of the animal: art 5(1), Sch 1 Pt I. If there is an outbreak of rabies at the premises or if the Secretary of State has reason to suspect that an animal detained or previously detained there may be or may have been affected by rabies, he may extend the period in relation to those premises: art 5(5). In England, a pet dog, cat or ferret which has been identified, vaccinated and blood tested in accordance with the provisions of EC Parliament and Council Regulation 998/2003 (OJ L146, 13.6.2003, p 1) and the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363 (see PARA 1055), and satisfies certain other conditions, may be released from quarantine: see the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 5A (added by SI 1999/3443; substituted by SI 2004/2364 (England)). In Wales, a cat or dog which has been microchipped, vaccinated and blood tested in accordance with the Pet Travel Scheme (Pilot Arrangements) (England) Order 1999, SI 1999/3443 (revoked in relation to England), and satisfies certain other conditions, may be released from quarantine: see the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 5B (added by SI 2002/882 (Wales)).

In relation to England, the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 5(2) does not apply to certain species of animal where a licence states that the animal is being brought into England for research purposes or to a zoo: see art 5(2A) (added by SI 2004/2364).

The quarantine system is a restriction on the right to import goods contained in the EC Treaty art 28 but can be justified under the public health exception contained in art 30: *R v Minister for Agriculture, Fisheries and Food, ex p Geiden* [2000] 1 CMLR 289, [1999] All ER (D) 1041 (in relation to a pet cat; decided, however, before the making of the Pet Travel Scheme (Pilot Arrangements) (England) Order 1999, SI 1999/3443 (see PARA 1055)).

20 Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 9(1), (2). The person in charge of authorised quarantine premises must adopt such system for the identification of animals, and keep records as to the receipt, treatment and subsequent release or death of animals, as the Secretary of State may require: see art 11 (amended by SI 1977/361). As to charges for the use of quarantine stations see PARA 1124. As to veterinary surgeons see PARA 1133 et seq.

21 Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 6(1), (2). In England, this does not apply where the Secretary of State is satisfied that the animal has been vaccinated in accordance with EC Parliament and Council Regulation 998/2003 (OJ L146, 13.6.2003, p 1) and the period of cover of the vaccination has not expired, and a neutralising antibody titration has been carried out on a blood

sample from the animal in accordance with Regulation 998/2003 and the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, and the result is in accordance with the requirements of those instruments: Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 6(3) (added by SI 1999/3443; substituted by SI 2004/2364). 'Dog' means an animal of the species *Canis familiaris*, and 'cat' means an animal of the species *Felis catus*, both of the order of mammals *carnivora*: Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 2(1).

22 The Secretary of State may in writing authorise any person to be an authorised carrying agent: see Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 10. If the animal is landed at a port or airport other than that specified in the licence, a person other than an authorised carrying agent may be authorised for the purpose of moving the animal: art 7(5).

23 Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 7(1)(a). In relation to England, art 7(1) does not apply to an animal brought into England which is exempted from quarantine by art 5(2A): art 7(1) (amended by SI 2004/2364).

24 Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 7(1)(b). See note 23. Where an animal is taken to such approved premises, it must be removed without undue delay, and in any case within 48 hours, to the authorised quarantine premises specified in the licence: art 7(2).

Where the authorised carrying agent acts on behalf of the person who was in charge of the animal at the time of landing, the latter is the person required to ensure the removal of the animal to an approved temporary quarantine station: *City of London Corp'n v British Caledonian Airways Ltd* [1980] 2 All ER 297.

25 Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 7(3), (4).

26 See the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 8 (amended by SI 1977/361; SI 1984/1182).

27 Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 13(1) (amended by SI 1990/2371); see note 9. As to the meaning of 'vessel' see PARA 868 note 3.

28 Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 13(2) (art 13(2), (4) amended by SI 1977/361). The person on whom the notice was served, the owner of the animal and any other person having charge of the animal must render all reasonable assistance to the inspector or constable. The reasonable expenses of the inspector or constable are recoverable on demand by the Secretary of State, the local authority or the police authority as a civil debt from the owner or the person on whom the notice was served: Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 13(2) (as so amended). As to the recovery of civil debts see the Magistrates' Courts Act 1980 ss 58, 96; and **MAGISTRATES** vol 29(2) (Reissue) paras 826, 828.

29 Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 13(4) (as amended: see note 28). Where the identity of the owner is or subsequently becomes known to him, he must inform the owner in writing as soon as practicable: art 13(4) proviso.

30 Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 14 (amended by SI 1977/361). The reasonable expenses incurred in the exercise of this power are recoverable on demand by the Secretary of State or the local or police authority as a civil debt from the owner: Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 14 (as so amended).

31 Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 16. As to the penalties, where not otherwise specified, for offences against the Animal Health Act 1981 see PARA 1101. Cf *Corp'n of London v Eurostar plc* [2004] EWHC 187 (Admin), (2005) 169 JP 263 (see note 10).

32 Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 17; Animal Health Act 1981 s 76(1), (2)(b).

33 Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211; Customs and Excise Management Act 1979 ss 49, 50, 139-144; Animal Health Act 1981 s 74 (amended by SI 1990/2371).

UPDATE

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1054 Rabies: importation and quarantine

NOTE 3--SI 2006/1471 reg 35 amended: SI 2008/3203. SI 2006/1536 reg 35 amended: SI 2009/390.

NOTE 4--SI 2008/944 amended: see PARA 1042.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(iii) Rabies/1055. Non commercial movement of pet animals: carriers, certification and checking arrangements.

1055. Non commercial movement of pet animals: carriers, certification and checking arrangements.

The following provisions apply in relation to England. A person may bring a pet animal into England without complying with the statutory provisions relating to quarantine for protection against rabies¹ where certain conditions are complied with². Pet dogs, cats and ferrets³ must be brought into England⁴ using an approved carrier⁵. A carrier must check the microchip and either the passport or the third country health certificate of every pet dog, cat or ferret it brings into England⁶, and must check the Hendra certificate of every cat it brings into England from Australia⁷. Such checks must be performed in the place and manner specified in the carrier's approval⁸.

The carrier must satisfy itself that (1) the animal has been implanted with a microchip⁹; (2) the number of the microchip corresponds with the number of the microchip recorded in the passport or the third country health certificate¹⁰ and, for a cat travelling from Australia, the Hendra certificate¹¹; (3) the passport or third country certificate shows that (a) it is current¹²; (b) the animal has been vaccinated against rabies, and revaccinated where required, in accordance with the necessary provisions¹³; (c) a neutralising antibody titration has been carried out on a blood sample from the animal in accordance with the specified provisions¹⁴ and with a result in accordance with that required¹⁵; and (d) the animal has been treated against *Echinococcus multilocularis* and ticks in accordance with the specified provisions¹⁶; (4) any Hendra certificate shows that the cat has not been on a holding where Hendra disease has been confirmed during the 60 days prior to departure from Australia¹⁷; and (5) there is no indication that the passport, third country health certificate or Hendra certificate has been falsified or unlawfully altered¹⁸.

If, after carrying out the checks, the carrier is not satisfied that the pet dog, cat or ferret may be brought into England¹⁹, where the checks were performed outside England, other than during transport directly to England, the carrier must not bring the animal into England²⁰. Where the checks were performed in England or during transport directly to England, the carrier must ensure that the animal is transferred to quarantine facilities²¹ or is otherwise dealt with under the relevant provisions²².

If, after carrying out the checks, the carrier is satisfied that the pet dog, cat or ferret may be brought into England²³, it must (i) issue a certificate to the person in charge of the animal which is signed and dated by a representative of the carrier²⁴, which states that the animal complies with the relevant provisions²⁵, and which states the date of importation to England²⁶; and (ii) if the animal is brought into England on a motor vehicle, give the person in charge a sticker or hanger for display on the vehicle stating that it is carrying a pet animal which has been checked and found to comply with the relevant provisions²⁷.

A person bringing a pet dog, cat or ferret into England in a vehicle must display the sticker or hanger given by the carrier in a prominent position in the windscreen until the vehicle leaves the confines of the port of arrival or, in the case of the Channel Tunnel, the Folkestone Terminal at Cheriton²⁸. A person bringing a pet dog, cat or ferret into England must produce on demand by an inspector the passport or third country health certificate, any Hendra certificate, and the certificate of entry given by the carrier²⁹, and must make the animal available for checking³⁰.

1 le the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211: see PARA 1054.

2 le provided that the movement complies with EC Parliament and Council Regulation 998/2003 (OJ L146, 13.6.2003, p 1) on the animal health requirements applicable to the non-commercial movement of pet animals (amended by EC Commission Regulation 592/2004 (OJ L94, 31.3.2004, p 7); EC Council Decision 2004/650 (OJ L298, 23.9.2004, p 22); EC Commission Regulation 1994/2004 (OJ L344, 20.11.2004, p 17); EC Commission Regulation 2054/2004 (OJ L355, 1.12.2004, p 14); EC Commission Regulation 425/2005 (OJ L3, 16.3.2005, p 69); EC Commission Regulation 1193/2005 (OJ L194, 26.7.2005, p 4); EC Commission Regulation 18/2006 (OJ L4, 7.1.2006, p 3); EC Commission Regulation 590/2006 (OJ L104, 13.4.2006, p 8); EC Commission Regulation 1467/2006 (OJ L274, 5.10.2006, p 3); and EC Commission Regulation 245/2007 (OJ L73, 13.3.2007, p 9)) (the 'Community Regulation') and the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363: regs 2(1), 4(1). The Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, apply only to England: reg 1. They do not apply in relation to an animal brought into England directly from other parts of the British Islands or the Republic of Ireland: reg 4(2). They do not apply to the movement to England of (1) more than five pet animals if they are travelling together and come from a country other than one listed in the Community Regulation Annex II Pt B Section 2; (2) prairie dogs originating in or travelling from the United States of America; or (3) cats travelling from Australia unless accompanied by a Hendra certificate: Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 5(a)-(c). A cat in transit through Australia by air is not treated as travelling from Australia if it does not leave the airport: reg 5(c). 'Hendra certificate' means a certificate which is signed by a representative of the Australian government veterinary services, states the number of the microchip implanted in the cat, and certifies that the cat has not been on a holding where Hendra disease has been confirmed during the 60 days prior to departure from Australia: regs 2(1), 5(c). 'Airport' means the aggregate of buildings and works comprised in an aerodrome within the meaning of the Civil Aviation Act 1982 (see **AIR LAW** vol 2 (2008) PARA 175): Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 2(1). 'Microchip' means the electronic identification system specified in the Community Regulation art 4(1): Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 2(1).

3 Pet dogs, cats and ferrets must be identified by microchip for the purposes of the Community Regulation art 4: Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 6.

4 le under the Community Regulation.

5 Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 8(1). 'Carrier' means any undertaking carrying goods or passengers for hire by land, sea or air: reg 2(1). The Secretary of State may approve a carrier if he is satisfied that (1) the carrier complies with the requirements in Sch 1; (2) the written procedures and contingency plans required by Sch 1 are adequate; and (3) the carrier will comply with the Community Regulation and the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, the written procedures required in Sch 1 and any conditions of the approval: reg 8(2). The approval must specify where checks must be carried out, the routes to be used by the approved carrier to bring a pet dog, cat or ferret into England, and any other conditions the Secretary of State considers appropriate: reg 8(3). The carrier must provide such information to the Secretary of State as he may reasonably require, and must comply with the terms and conditions of its approval: reg 8(4), (5). Approvals must be in writing, may be made subject to such conditions as the Secretary of State considers necessary to ensure compliance with the provisions of the Community Regulation and of the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, and protect public or animal health: reg 3. Further, approvals may be amended, suspended or revoked by notice in writing at any time; in particular approvals granted under reg 8 may be suspended or revoked if the Secretary of State is reasonably of the opinion that the written procedures and contingency plans produced under Sch 1 have not been complied with: reg 3. As to the Secretary of State see PARA 705.

6 le under the Community Regulation: Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 10(1). 'Third country health certificate' means a health certificate complying with EC Commission Decision 2004/203 (OJ L65, 3.3.2004, p 13) and the supporting documentation, or a certified copy of that documentation, referred to in art 3: Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 2(1).

7 Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 10(2).

8 le under the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 8: reg 10(3).

9 Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 10(4)(a).

10 Such a number must appear on both the health certificate and its supporting documentation: Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 10(4)(b).

11 Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 10(4)(b).

12 Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 10(4)(c)(i).

13 Ie in accordance with the Community Regulation: Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363 reg 10(4)(c)(ii).

14 Ie in accordance with the Community Regulation and the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, and with a result in accordance with that required by the Community Regulation: Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 10(4)(c)(iii). The neutralising antibody titration at least equal to 0.5 IU/ml referred to in the Community Regulation art 6(1) must be carried out on a blood sample taken at least six months before the pet animal is brought into England: Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 7.

15 Ie required by the Community Regulation: Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 10(4)(c)(iii). If the passport or third country health certificate of a pet dog or cat shows that it was vaccinated or its blood sample was taken before its microchip was inserted, it will not fail either of the checks in reg 10(4)(c)(ii) or (iii) for that reason if (1) it was vaccinated in a country or territory where the competent authority, or a body authorised by that authority, operates a mandatory identification system under which that species is required to be registered and identified by tattoo or microchip, or by tattoo only; (2) the number of its tattoo corresponds with the number of the tattoo recorded in the passport or third country health certificate (on both the health certificate and its supporting documentation); and (3) its passport or third country health certificate shows that it was vaccinated after it was tattooed and before the blood sample was taken: reg 10(5).

16 Ie in accordance with the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 9: reg 10(4)(c)(iv). Any such treatments must have been certified in accordance with reg 9(4): reg 10(4)(c)(iv).

17 Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 10(4)(d).

18 Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 10(4)(e).

19 Ie under the Community Regulation and the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363.

20 Ie under the Community Regulation: Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 10(6)(a).

21 Ie in accordance with the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211: see PARA 1054.

22 Ie under the provisions of the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211: Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 10(6)(b). Compliance with reg 10(6)(b) is a defence to a breach of the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 4(1).

23 Ie under the Community Regulation and Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363.

24 Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 10(7)(a)(i).

25 Ie with the Community Regulation and the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363: reg 10(7)(a)(ii).

26 Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 10(7)(a)(iii).

27 Ie with the Community Regulation and the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363: reg 10(7)(b).

28 Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 11(1).

29 Ie under the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 10(7)(a).

30 Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 11(2). Regulation 11(2) must be complied with (1) in the case of arrival by sea, in the port area; (2) in the case of transport through the Channel Tunnel, in the Tunnel System as defined in the Channel Tunnel Act 1987 s 1(7) or the Folkestone Terminal at Cheriton, except that an inspector of a local authority only has powers in England; and (3) in the case of air transport, in the airport: Non Commercial Movement of Pet Animals (England)

Regulations 2004, SI 2004/2363, reg 11(2)(a)-(c). 'Local authority' means (a) in the City of London, the Common Council; (b) in any part of England where there is a unitary authority for that local government area within the meaning of the Local Government Changes for England Regulations 1994, SI 1994/867, that authority; (c) where there is not a unitary authority, (i) in a metropolitan district, the council of that district; (ii) in a non-metropolitan county, the council of that county; or (iii) in each London borough, the council of that borough: Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 2(1).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1055 Non commercial movement of pet animals: carriers, certification and checking arrangements

NOTE 2--Regulation 998/2003 further amended: EC Commission Regulation 898/2009 (OJ L256, 29.9.2009, p 10).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(iii) Rabies/1056. Non commercial movement of pet animals: offences, administration and enforcement.

1056. Non commercial movement of pet animals: offences, administration and enforcement.

The following provisions apply in relation to England. The Secretary of State is the competent authority for the purposes of approving veterinarians¹ and granting derogations in relation to animals under three months old².

An inspector³, on producing some duly authenticated document showing his authority if required to do so, has the right at all reasonable hours to enter any land or premises⁴ for the purpose of administering and enforcing the provisions relating to the non-commercial movement of pet animals⁵.

No person may (1) intentionally obstruct any person acting in the execution of the relevant provisions⁶; (2) without reasonable cause, fail to give any person acting in the execution of the relevant provisions⁷ any assistance or information which that person may reasonably require for the purposes of his functions⁸; or (3) furnish to any person acting in the execution of the relevant provisions⁹ any information which he knows to be false or misleading¹⁰. No person, other than a duly approved veterinary surgeon or a person acting at his direction, may alter any part of a passport¹¹, any part of a third country health certificate¹², or any part of a Hendra certificate¹³. No person may knowingly be in possession of a passport, third country health certificate or Hendra certificate which has been unlawfully altered¹⁴, or a document which falsely purports to be a passport, third country health certificate or Hendra certificate¹⁵.

A person failing to comply with certain provisions relating to the non-commercial movement of pet animals¹⁶ is guilty of an offence and is liable, on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both¹⁷. Where a body corporate is guilty of an offence under these provisions, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director¹⁸, manager, secretary or similar officer of the body corporate, or a person who was purporting to act in such a capacity, he as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly¹⁹.

Local authorities are required to enforce the provisions relating to the non-commercial movement of pet animals²⁰.

1 Ie in accordance with EC Parliament and Council Regulation 998/2003 (OJ L146, 13.6.2003, p 1) on the animal health requirements applicable to the non-commercial movement of pet animals (the 'Community Regulation') arts 5(1), 6(1): Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 12(1). Every person granted an approval under reg 12 must comply with its terms and conditions: reg 12(2). As to the making of approvals see PARA 1055 note 5.

2 Ie in accordance with the Community Regulation art 6(2): Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 12(1). Each such derogation must be granted by an approval under the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363: reg 12(1). As to the Secretary of State see PARA 705.

3 'Inspector' means a person appointed by the Secretary of State or a local authority to be an inspector for the purposes of the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363: reg 2(1). A person appointed as an inspector or veterinary inspector for the purposes of the Animal Health Act 1981 is an inspector for the purposes of the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363: reg 2(1).

4 'Premises' includes any vessel, boat, aircraft or vehicle of any other description but does not include premises used exclusively as a dwelling house: Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 13(1).

5 le the provisions of the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363: reg 13(1). Such an inspector has the power to carry out all checks, searches and examinations which may be necessary to ascertain whether the Community Regulation and the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, are being complied with, and in particular may examine and copy documentary or data processing material: reg 13(2).

6 le the provisions of the Community Regulation and Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363: reg 14(1)(a).

7 le in the execution of the Community Regulation and the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363.

8 le any of his functions under the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363: reg 14(1)(b).

9 le in the execution of the Community Regulation and the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363.

10 Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 14(1)(c).

11 le except for Section I: Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 15(1)(a).

12 Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 15(1)(b). As to the meaning of 'third country health certificate' see PARA 1055 note 6.

13 Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 15(1)(c). As to the meaning of 'Hendra certificate' see PARA 1055 note 2.

14 Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 15(2)(a).

15 Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 15(2)(b).

16 le the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 8(5), 10, 11, 12(2), 14 or 15: reg 16(1).

17 Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 17. As to the standard scale see PARA 738 note 1.

18 'Director', in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate: Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 16(3).

19 Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 16(2).

20 Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363, reg 18(1). The Secretary of State may direct in relation to cases of a particular description or a particular case, that any such enforcement duty imposed on a local authority is to be discharged by him and not by the local authority: reg 18(2). As to the meaning of 'local authority' see PARA 1055 note 30.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(iii) Rabies/1057. Rabies: control.

1057. Rabies: control.

An order has been made¹ laying down a comprehensive procedure for the control of possible rabies² outbreaks in Great Britain. The order covers virtually all animals which live on land³, irrespective of whether they are domesticated or wild, or living in captivity or not⁴.

Any person who knows that an animal to which the order applies is suffering from rabies, or has died from that disease, must with all practicable speed report that fact to a divisional veterinary manager⁵ or to a police constable, unless he reasonably believes that another person has already done so⁶. A person who knows or suspects that an animal in his possession or under his charge is, or was at the time of its death, affected with rabies must, as far as practicable, keep the animal or carcase separate from any other animal⁷.

Where a divisional veterinary manager receives information regarding an animal affected with or suspected of being affected with rabies at any premises, or the death of any such animal at any such premises, or through any other cause he reasonably suspects that rabies exists or has existed at such premises within the preceding 56 days, or that there is an animal which has been or may have been exposed to infection, he may by notice declare the premises to be an infected place⁸. Such a notice remains in force until cancelled or varied by further written notice⁹, and copies of any notice must be sent to the Secretary of State¹⁰.

Where a Department veterinary inspector¹¹ has grounds for suspecting the existence of rabies¹², he must carry out an inquiry to establish whether rabies exists, and for this purpose he is given power to enter land, remove animals and carcasses for investigation and take diagnostic samples. The occupier of the infected place and anyone who may have been connected with animals at the premises are required to assist at the inquiry and to supply any relevant information¹³. The opinion of the Department veterinary inspector is subject to confirmation by or on behalf of the Chief Veterinary Officer¹⁴. Where the Secretary of State believes or suspects that rabies exists or has existed in an area within the preceding six months, he may by order declare the area, together with adjoining areas into which he considers that there is a possibility of the disease spreading, an infected area¹⁵. He may arrange for the destruction of foxes¹⁶ and the erection of warning notices¹⁷ in an infected area and a Department veterinary inspector may prohibit by notice any sporting or recreational activity on land in the area¹⁸. Contravention of the order is an offence against the Animal Health Act 1981¹⁹.

Any animal in an infected place which is affected or suspected of being affected with rabies, or any animal which has been in contact with such an animal, must be detained and isolated in an approved part of the infected place²⁰. No person, except an inspector, the owner or his representative or a veterinary surgeon employed by him, or a person tending the animal, may have access to an animal so detained and isolated except by authority of a licence²¹. No animal or carcase may be moved into or out of an infected place except under licence, and a carcase must be disposed of in a manner specified by a veterinary inspector²². An animal may be slaughtered by the owner after notice has been given to a veterinary inspector; steps must be taken to ensure that the head and neck are not damaged and the carcase must, if required, be made available to a veterinary inspector for investigation²³. Notice of the death of an animal in the infected place must be given with all practicable speed to a veterinary inspector by the owner or person in charge of the animal or by the occupier of the infected place²⁴. Nothing coming from or used in connection with an infected or suspected animal or an animal which has been in contact therewith may be removed from the infected place except under licence²⁵. The occupier must disinfect every part of an infected place where any such animal has been in

a manner approved by a Department inspector, and must prominently display warning notices approved by an inspector²⁶.

Compensation is payable on the slaughter of an animal under the provisions described above. In the case of an animal affected with rabies at the time of its slaughter, compensation is 50 per cent of the full market value immediately before it contracted the disease; in any other case compensation is the full market value of the animal at the time of the slaughter²⁷.

1 le the Rabies (Control) Order 1974, SI 1974/2212. This now has effect under the Animal Health Act 1981: see PARA 1040.

Note also the power of any constable of the metropolitan police force to destroy any dog or other animal reasonably suspected of being in a rabid state or of having been bitten by any dog or other animal in a rabid state: Metropolitan Police Act 1839 s 61 (amended by the Statute Law Revision (No 2) Act 1888; and the Statute Law (Repeals) Act 1989).

2 Rabies is made a disease for the purposes of what is now the Animal Health Act 1981: Rabies (Control) Order 1974, SI 1974/2212, art 3; see PARA 1042. Accordingly, the Secretary of State is empowered to slaughter animals suspected of the disease: see PARA 1089. As to compensation payable upon such slaughter see text and note 28. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

3 Specifically, the provisions of the Rabies (Control) Order 1974, SI 1974/2212, apply to the following orders of animals: *artiodactyla*; *carnivora*; *chiroptera*; *dermoptera*; *edentata*; *hyracoidea*; *insectivora*; *lagomorpha*; *marsupialia*; *monotremata*; *perissodactyla*; *pholidota*; primates (except *hominidae* (man)); *proboscidea*; *rodentia*; and *tubulidentata*: art 2(1), Sch 1.

4 Rabies (Control) Order 1974, SI 1974/2212, arts 2(1), 4(1).

5 le an inspector appointed for the purposes of the Animal Health Act 1981 by the Secretary of State or by a local authority, including, in relation to the former, a veterinary inspector; a veterinary inspector is an inspector appointed by the Secretary of State: Rabies (Control) Order 1974, SI 1974/2212, art 2(1) (amended by SI 1995/2922). See further PARA 1120.

6 Rabies (Control) Order 1974, SI 1974/2212, art 4(1). The provisions of art 4(1), (2) do not apply in such cases as may be prescribed by an order made under the Animal Health Act 1981 s 1 for the purpose of regulating the keeping, importation or use of rabies virus: Rabies (Control) Order 1974, SI 1974/2212, art 4(4). See the Specified Animal Pathogens Order 2008, SI 2008/944, which does not, however, grant specific exemption from the requirements of the Rabies (Control) Order 1974, SI 1974/2212.

See also the Animal Health Act 1981 s 15, under which the Rabies (Control) Order 1974, SI 1974/2212, partially takes effect.

Where notice is given under this provision to a police constable or a local authority inspector, he must transmit the information by the most expeditious means (1) in the case of a police constable, to the divisional veterinary manager and to a local authority inspector; and (2) in the case of a local authority inspector, to the divisional veterinary manager: art 4(3). The divisional veterinary manager is the person appointed for the time being by the Secretary of State to receive information regarding animals and carcases in relation to specified diseases in the particular area: art 2(1) (amended by SI 1995/2922).

7 Rabies (Control) Order 1974, SI 1974/2212, art 4(2). See also note 6.

8 Rabies (Control) Order 1974, SI 1974/2212, art 5(1). The form of the notice is prescribed in Sch 2 (amended by SI 1995/2922). As to the rules which apply to an infected place under the Rabies (Control) Order 1974, SI 1974/2212, see arts 5(2), 7; text and notes 20-26. A Department veterinary inspector (see note 11) may direct the alteration of the limits of the infected place specified in the notice, and may direct that any of the standard rules is not to apply in a particular case, or that additional rules are to apply: art 5(3).

9 Rabies (Control) Order 1974, SI 1974/2212, art 5(4).

10 Rabies (Control) Order 1974, SI 1974/2212, art 5(5).

11 The term used throughout the Rabies (Control) Order 1974, SI 1974/2212, is 'Ministry veterinary inspector', but since the transfer of functions from the Ministry of Agriculture, Fisheries and Food to the Department for the Environment, Food and Rural Affairs this must now be taken to refer to an inspector holding his appointment under that department. See also PARA 1096 note 1.

12 See text and note 8.

- 13 Rabies (Control) Order 1974, SI 1974/2212, art 6.
- 14 Rabies (Control) Order 1974, SI 1974/2212, art 6(1).
- 15 Rabies (Control) Order 1974, SI 1974/2212, art 9(1). Such an order may provide for the division of an infected area into zones, and may specify for the application of provisions of Sch 3 to each such zone: art 9(2). Those provisions relate to (1) the restriction of movement into and out of a zone of animals prescribed in the order; (2) the control of dogs and cats; (3) the control of other animals prescribed by the order; (4) the seizure, detention and disposal (including destruction) of animals not under control; (5) the compulsory vaccination of animals of prescribed species; (6) the prohibition of prescribed kinds of events at which animals or prescribed species of animals are gathered together; the prohibition of (a) hunting (including hunting and stalking deer) and cubbing; (b) racing or coursing, or training therefor, of hounds or dogs; (c) point-to-point meetings; and (d) shooting of game or other wildlife; and (7) the notification of deaths of animals: Sch 3. See also the Animal Health Act 1981 s 20.
- 16 Animal Health Act 1981 s 19; Rabies (Control) Order 1974, SI 1974/2212, art 10.
- 17 Rabies (Control) Order 1974, SI 1974/2212, art 12.
- 18 Rabies (Control) Order 1974, SI 1974/2212, art 11.
- 19 Rabies (Control) Order 1974, SI 1974/2212, art 13; and see PARA 1100. As to the penalties for offences against the Animal Health Act 1981 see PARA 1101.
- 20 Rabies (Control) Order 1974, SI 1974/2212, art 7(1) r 1.
- 21 Rabies (Control) Order 1974, SI 1974/2212, art 7(1) r 2.
- 22 Rabies (Control) Order 1974, SI 1974/2212, art 7(1) rr 3, 4.
- 23 Rabies (Control) Order 1974, SI 1974/2212, art 7(1) r 5.
- 24 Rabies (Control) Order 1974, SI 1974/2212, art 7(1) r 6.
- 25 Rabies (Control) Order 1974, SI 1974/2212, art 7(1) r 7.
- 26 Rabies (Control) Order 1974, SI 1974/2212, art 7(1) rr 8, 9. If the occupier of the infected place fails to comply with either of these requirements, the local authority may enter the infected place and carry out the work required, recovering its reasonable expenses from the occupier as a civil debt: art 7(2). As to the recovery of civil debts see the Magistrates' Courts Act 1980 ss 58, 96; and **MAGISTRATES** vol 29(2) (Reissue) PARAS 826, 828. As to 'Department inspectors' see note 11.
- 27 Rabies Compensation Order 1976, SI 1976/2195. See PARA 1092.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1057 Rabies: control

NOTE 6--SI 2008/944 amended: see PARA 1042.

TEXT AND NOTES 8-10--SI 1974/2212 reg 5(5), Sch 2 amended to replace references to 'divisional veterinary manager' with references to 'Secretary of State': SI 2009/2713 (England).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(iii) Rabies/1058. Powers of entry and search in respect of rabies offences.

1058. Powers of entry and search in respect of rabies offences.

A constable is empowered to enter and search any premises for the purpose of arresting a person whom he reasonably suspects to be committing or to have committed any of the following offences: (1) landing or attempting to land, or importing or attempting to import through the Channel Tunnel, any animal in contravention of an order expressed to be for the purpose of preventing the introduction of rabies into Great Britain¹; (2) failure by any person having the charge or control of any vessel or boat to discharge any obligation imposed on him by such an order²; or (3) the movement of any animal into or out of any place³ or area⁴ declared to be infected with rabies, in contravention of any order governing such a place or area⁵.

Where a power to seize an animal or cause it to be seized is conferred on a constable by an order expressed to be for the purpose of preventing the introduction of rabies into Great Britain⁶, the constable may enter, by force if necessary, and search any vessel, boat, aircraft or vehicle of any other description in which there is, or in which he reasonably suspects there to be, an animal in respect of which the power of seizure applies⁷.

These powers are in addition to the general powers under the Animal Health Act 1981⁸, but, unlike those general powers, are not exercisable by an inspector⁹.

¹ See the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211; and generally PARA 1054.

² See the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 12 (substituted by SI 1977/361; amended by SI 1994/1716). As to the meaning of 'Great Britain' see PARA 830 note 21. The general duty of such a person is to ensure that any animal which has been outside Great Britain, Northern Ireland, the Republic of Ireland, the Channel Islands and the Isle of Man within the preceding six months, and which is on board a vessel (1) is restrained and confined; (2) does not come into contact with any animal except one which has been transported with it; and (3) is in no circumstances permitted to land (except under licence, under controlled transportation arrangements, or as described in PARA 1054 note 10): Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211, art 12(1)-(3) (as so substituted; art 12(3) as so amended). In addition that person is under a duty to give notice of the loss of such an animal and the person in charge of the animal must give notice of any incident whereby rabies virus could be transmitted to a human or to another animal: art 12(4), (5) (as so substituted). As to the meaning of 'vessel' see PARA 868 note 3.

³ As to the provisions applying in infected places see PARA 1057 text and note 8.

⁴ As to the declaration of an infected area, and as to provisions which may be applied in infected areas, see PARA 1057 text and note 15.

⁵ Animal Health Act 1981 s 61(2) (amended by the Serious Organised Crime and Police Act 2005 s 111, Sch 7 para 55; and by SI 1990/2371); Police and Criminal Evidence Act 1984 s 17(1)(caa) (added by the Serious Organised Crime and Police Act 2005 Sch 7 para 58).

⁶ See note 1.

⁷ Animal Health Act 1981 s 62(2). See also note 2.

⁸ See the Animal Health Act 1981 s 60; and PARA 1095.

⁹ Animal Health Act 1981 s 63(1). As to the powers of inspectors see PARA 1096.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(iv) Foot-and-Mouth Disease/1059. Biosecurity.

(iv) Foot-and-Mouth Disease

1059. Biosecurity.

The Secretary of State and the Welsh Ministers¹ respectively must prepare and publish guidance² on the appropriate biosecurity measures³ to be taken in relation to foot-and-mouth disease⁴. They must from time to time review the guidance, and revise it if appropriate⁵.

A person having a function under the Animal Health Act 1981 relating to foot-and-mouth disease as described above must not exercise the function unless the guidance referred to above has been published and has not been withdrawn⁶. An act done in contravention of this prohibition is done without lawful authority⁷. However, if:

- 223 (1) a person having functions under the Act;
- 224 (2) any person who is the owner or occupier of premises on which animals are kept;
- 225 (3) any person who has charge of animals; or
- 226 (4) any person who is under the direction of a person mentioned in heads (1) to (3),

fails to comply with the guidance he is not by reason only of that failure liable in any civil or criminal proceedings⁸, but the guidance is admissible in evidence in such proceedings and a court may take account of any failure to act in accordance with it in deciding any question in the proceedings⁹.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 After preparing a draft of the guidance the Secretary of State or the Welsh Ministers must send a copy of the draft to such persons and organisations as he thinks or they think are representative of those having an interest in biosecurity measures; must consider any representations made to him or them about the draft by such persons and organisations; and may amend the draft accordingly: Animal Health Act 1981 s 6A(2) (ss 6A, 6B added by the Animal Health Act 2002 s 16). Thereafter the Secretary of State or the Welsh Ministers must publish the guidance in such manner as he thinks or they think appropriate: Animal Health Act 1981 s 6A(3) (as so added).

See also s 6A(10) (as so added), which validates anything done for the purposes of s 6A(1)-(3) before the passing of the Animal Health Act 2002.

The Animal Health Act 1981 ss 6A, 6B came into force on 1 July 2003: Animal Health Act 2002 (Commencement) Order 2002, SI 2002/3044.

3 'Biosecurity measures' are measures taken to prevent the spread of causative agents of disease: Animal Health Act 1981 s 6A(7) (as added: see note 2). 'Causative agent' includes any virus, bacterium and any other organism or infectious substance which may cause or transmit disease: s 6A(8) (as so added).

4 Animal Health Act 1981 s 6A(1) (as added: see note 2). This applies also to any other disease which the Secretary of State or the Welsh Ministers may by order specify: see s 6A(1); and PARA 1046.

5 See the Animal Health Act 1981 s 6A(4) (as added: see note 2). In such case, s 6A(1)-(3) applies to the revision: s 6A(5). But if the Secretary of State or the Welsh Ministers think that it is necessary to revise the guidance urgently he or they may publish revised guidance without proceeding under s 6A(2): s 6A(6) (as so added).

6 Animal Health Act 1981 s 6B(1) (as added: see note 2).

- 7 Animal Health Act 1981 s 6B(2) (as added: see note 2).
- 8 Animal Health Act 1981 s 6B(3), (5) (as added: see note 2).
- 9 Animal Health Act 1981 s 6B(4) (as added: see note 2).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(iv) Foot-and-Mouth Disease/1060. National contingency plan against the outbreak of disease.

1060. National contingency plan against the outbreak of disease.

The appropriate authority¹ must prepare and publish² a document (the 'national contingency plan') indicating the arrangements the authority intends to put in place for the purpose of dealing with any occurrence of foot-and-mouth disease³. The authority must from time to time⁴ review the plan, and revise it if appropriate⁵.

1 The appropriate authority is, in relation to England the Secretary of State, and in relation to Wales the Secretary of State and the Welsh Ministers acting jointly (except for the purposes of specifying further diseases, in which case it is the Welsh Ministers acting alone): Animal Health Act 1981 s 14A(8) (s 14A added by the Animal Health Act 2002 s 18). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 After preparing a draft of the national contingency plan the appropriate authority must send a copy of the draft to such persons and organisations as the authority thinks are representative of those having an interest in the arrangements, must consider any representations made to the authority about the draft by such persons and organisations, and may amend the draft accordingly: Animal Health Act 1981 s 14A(2) (as added: see note 1). The authority must thereafter publish it in such manner as it thinks likely to bring it to the attention of persons who may be affected by the arrangements: s 14A(3) (as so added).

See also s 14A(10) (as so added), which validates anything done (except the making of an order specifying a disease) for the purposes of s 14A(1)-(3) before the passing of the Animal Health Act 2002.

The Animal Health Act 1981 s 14A came into force on 24 March 2003: Animal Health Act 2002 (Commencement) Order 2002, SI 2002/3044.

3 Animal Health Act 1981 s 14A(1) (as added: see note 1). This applies also to any other disease which the Secretary of State may by order specify: see s 14A(1); and PARA 1047.

4 This must not be less frequently than at intervals of one year: Animal Health Act 1981 s 14A(4) (as added: see note 1).

5 Animal Health Act 1981 s 14A(4) (as added: see note 1). In such a case, the provisions of s 14A(2), (3) (see note 2) apply to the revision: s 14A(5).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(iv) Foot-and-Mouth Disease/1061. Slaughter of susceptible animals.

1061. Slaughter of susceptible animals.

The relevant authority¹ must cause to be slaughtered all susceptible animals² kept on premises which are declared by the relevant authority to be infected premises under any provision which gives effect in relation to England or Wales to European legislation³ on Community measures for the control of foot-and-mouth disease⁴. The relevant authority may decide not to slaughter susceptible animals kept in:

- 227 (1) a laboratory, zoo, wildlife park or other premises where animals are kept principally for the purposes of display and education of the public, or an enclosed area principally used for shooting; or
- 228 (2) premises not falling within head (1) of a body, institute or centre which keeps animals only for the purposes of conservation, display and education of the public, or scientific research or breeding of such animals for research and is approved by the relevant authority in relation to those animals in accordance with any provision which gives effect in relation to England or Wales to the European legislation laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules⁵; or
- 229 (3) other premises where susceptible animals are kept for scientific purposes or purposes related to conservation of species or farm animal genetic resources⁶.

Before considering a decision not to slaughter susceptible animals, the relevant authority must be satisfied that basic European Community interests are not endangered (and in particular it must take into account any threat of the spread of foot-and-mouth disease to other member states), and that adequate measures are in place to prevent any risk of spreading foot-and-mouth disease virus⁷. If the premises consist of two or more separate production units⁸, the relevant authority may decide not to slaughter susceptible animals kept on free units of those premises⁹.

The relevant authority must for animals slaughtered under these provisions pay compensation as follows: (a) where the animal slaughtered was affected with foot-and-mouth disease, the compensation is the value of the animal immediately before it became so affected; (b) in every other case the compensation is the value of the animal immediately before it was slaughtered¹⁰.

1 'Relevant authority' means (1) in relation to premises in England, the Secretary of State; (2) in relation to premises in Wales, the Welsh Ministers; and (3) in relation to premises which are situated partly in England and partly in Wales, either the Secretary of State or the Welsh Ministers, as they agree between them (or, in the absence of agreement, the Secretary of State): Animal Health Act 1981 ss 31(c), 32(1), Sch 3 para 2A(11) (Sch 3 para 2A added by SI 2005/3475). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 'Susceptible animal' means a cow, sheep, goat, deer, camel, llama, alpaca, guanaco, vicuna, any other ruminant or any swine (ie a member of the suborder *Suina* of the order *Artiodactyla*): Animal Health Act 1981 Sch 3 para 2A(11) (as added: see note 1).

3 Ie EC Council Directive 2003/85 (OJ L306, 22.11.2003, p 1) on Community measures for the control of foot-and-mouth disease.

4 Animal Health Act 1981 Sch 3 para 2A(1), (2) (as added: see note 1).

5 le to EEC Council Directive 92/65 (OJ L268, 14.9.1992, p 54) art 13(2).

6 Animal Health Act 1981 Sch 3 para 2A(3) (as added: see note 1).

7 Animal Health Act 1981 Sch 3 para 2A(4) (as added: see note 1).

8 The relevant authority may by notice served on the occupier declare in respect of any premises that those premises are to be regarded as two or more separate production units: Animal Health Act 1981 Sch 3 para 2A(6) (as added: see note 1). Such a declaration may not be made unless the Chief Veterinary Officer has advised the relevant authority at the time of a veterinary inquiry into the premises that in his opinion (1) the structure, including the administration, and size of the premises allow in each separate unit for a complete separation of housing and keeping (including air space) for their susceptible animals; (2) the operations on each separate unit, and in particular stable and pasture management, milking, feeding, and removal of dung or manure are completely separated and carried out by different personnel; (3) the machinery, non-susceptible working animals, equipment, installations, instruments and disinfection facilities used in each separate unit are completely separate; and (4) each of heads (1)-(3) has applied continuously for at least (a) 28 days immediately prior to the earliest date on which the premises were infected with foot-and-mouth disease, if only bovine animals or swine have been kept on the premises within that period; or (b) 42 days immediately prior to that date, in any other case: Sch 3 para 2A(7) (as so added). A declaration under Sch 3 para 2A(6) must identify, and designate the boundaries of, each separate unit and must declare every separate unit which is free of disease to be a free unit: Sch 3 para 2A(8) (as so added). 'Chief Veterinary Officer' means the Chief Veterinary Officer appointed by the relevant authority: Sch 3 para 2A(11) (as so added).

9 Animal Health Act 1981 Sch 3 para 2A(5) (as added: see note 1). A unit ceases to be a free unit if the relevant authority serves a notice on the occupier (1) varying the declaration in respect of it under Sch 3 para 2A(6) such that it is no longer declared to be a free unit; or (2) revoking that declaration: Sch 3 para 2A(9) (as so added).

10 Animal Health Act 1981 Sch 3 para 2A(10) (as added: see note 1). As to the value of animals for these purposes see s 34(7); the Foot-and-Mouth Disease (Ascertainment of Value) (No 5) Order 2001, SI 2001/2734 (amended by SI 2006/182); and the Foot-and-Mouth Disease (Ascertainment of Value) (Wales) (No 5) Order 2001, SI 2001/2771 (amended by SI 2006/179).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(iv) Foot-and-Mouth Disease/1062. Slaughter of affected animals.

1062. Slaughter of affected animals.

The Secretary of State or the Welsh Ministers¹ may also cause to be slaughtered²:

- 230 (1) any animals affected with foot-and-mouth disease, or suspected of being so affected³;
- 231 (2) any animals which are or have been in the same field, shed, or other place, or in the same herd or flock, or otherwise in contact with animals affected with foot-and-mouth disease, or which appear to the Secretary of State or the Welsh Ministers to have been in any way exposed to the infection of foot-and-mouth disease⁴;
- 232 (3) any animals they think should be slaughtered with a view to preventing the spread of foot-and-mouth disease⁵.

The Secretary of State and the Welsh Ministers may exercise the power under head (3) above whether or not animals:

- 233 (a) are affected with foot-and-mouth disease or suspected of being so affected;
- 234 (b) are or have been in contact with animals so affected;
- 235 (c) have been exposed to the infection of foot-and-mouth disease;
- 236 (d) have been treated with vaccine against foot-and-mouth disease⁶.

Compensation is payable in respect of animals slaughtered under these provisions; where the animal slaughtered was affected with foot-and-mouth disease, to the value of the animal immediately before it became so affected; and in every other case to the value of the animal immediately before it was slaughtered⁷.

The Secretary of State and the Welsh Ministers must prepare and publish, and from time to time review (and if appropriate revise) a disease control (slaughter) protocol⁸ indicating:

- 237 (i) the purposes for which the power under head (3) and heads (a) to (d) above will be exercised⁹;
- 238 (ii) the principal factors to be taken into account in deciding whether to exercise the power¹⁰;
- 239 (iii) the procedure to be followed in deciding whether in any circumstances or description of circumstances the power is to be exercised, including the application of such methods of detecting disease in animals as may be available¹¹;
- 240 (iv) the procedure to be followed by persons who have functions in relation to the exercise of the power¹²; and
- 241 (v) the means by which a particular decision to exercise the power may be reviewed¹³.

The power to which the protocol applies must not be exercised unless the protocol has been published and has not been withdrawn¹⁴; and any act done in contravention of this provision is done without lawful authority¹⁵.

The Secretary of State or the Welsh Ministers must not exercise the power under head (3) and heads (a) to (d) above unless before they first exercise the power in relation to any description of circumstances they publish their reasons in relation to the circumstances of that description (A) for the exercise of the power; and (B) for not exercising his power to cause animals to be treated with serum or vaccine¹⁶. If the Secretary of State or the Welsh Ministers do not comply with this requirement in relation to any description of circumstances anything done in connection with the exercise of the power in such circumstances must be taken to have been done without lawful authority¹⁷.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 Animal Health Act 1981 ss 31(c), 32(1), Sch 3 para 3 (Sch 3 para 3 amended by SI 2005/3475).

3 Animal Health Act 1981 ss 31(c), 32(1), Sch 3 para 3(1)(a).

4 Animal Health Act 1981 Sch 3 para 3(1)(b).

5 Animal Health Act 1981 Sch 3 para 3(1)(c) (added by the Animal Health Act 2002 s 1(1), (2)).

6 Animal Health Act 1981 Sch 3 para 3(1A) (added by the Animal Health Act 2002 s 1(3)).

7 Animal Health Act 1981 Sch 3 para 3(2). As to the value of animals for these purposes see s 34(7); the Foot-and-Mouth Disease (Ascertainment of Value) (No 5) Order 2001, SI 2001/2734 (amended by SI 2006/182); and the Foot-and-Mouth Disease (Ascertainment of Value) (Wales) (No 5) Order 2001, SI 2001/2771 (amended by SI 2006/179). See also *R (on the application of Dixon) v Secretary of State for the Environment, Food and Rural Affairs* [2002] EWHC 831 (Admin), (2002) Times, 22 April; *National Farmers' Union v Secretary of State for the Environment, Food and Rural Affairs* [2003] All ER (D) 55 (Mar). As to provisions applicable to slaughter and compensation generally see PARAS 1089, 1092.

8 See the Animal Health Act 1981 s 32B(1)(a), (2)-(6) (ss 32B-32D added by the Animal Health Act 2002 ss 3, 4).

9 Animal Health Act 1981 s 32B(2)(a) (as added: see note 8).

10 Animal Health Act 1981 s 32B(2)(b) (as added: see note 8).

11 Animal Health Act 1981 s 32B(2)(c) (as added: see note 8).

12 Animal Health Act 1981 s 32B(2)(d) (as added: see note 8).

13 Animal Health Act 1981 s 32B(2)(e) (as added: see note 8).

14 Animal Health Act 1981 s 32C(1) (as added: see note 8).

15 Animal Health Act 1981 s 32C(2) (as added: see note 8). However, if a person who has any function in relation to the exercise of such a power fails to act in accordance with the protocol he is not by reason only of that failure liable in any civil or criminal proceedings: s 32C(3) (as so added). But the protocol is admissible in evidence in such proceedings and a court may take account of any failure to act in accordance with it in deciding any question in the proceedings: s 32C(4) (as so added).

16 Animal Health Act 1981 s 32D(1)(a), (2) (as added: see note 8). The power referred to in head (B) in the text is that contained in s 16; see PARA 1051. See also s 14B; and PARA 1063.

17 Animal Health Act 1981 s 32D(3) (as added: see note 8). See also note 14.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(iv) Foot-and-Mouth Disease/1063. Vaccination.

1063. Vaccination.

In relation to any occurrence of foot-and-mouth disease the Secretary of State or the Welsh Ministers¹ must consider what is the most appropriate means of preventing the spread of the disease². In particular they must consider whether in relation to the occurrence treating animals with serum or vaccine is more appropriate than any other means of preventing the spread of the disease³. They may cause animals to be treated with serum or vaccine⁴, but such vaccination may only be carried out in accordance with the conditions of a licence issued by the Secretary of State or the Welsh Ministers⁵.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 Animal Health Act 1981 s 14B(1) (s 14B added by the Animal Health Act 2002 s 15).

3 Animal Health Act 1981 s 14B(2) (as added: see note 2).

4 See the Animal Health Act 1981 s 16; the Foot-and-Mouth Disease (Infected Areas) (Vaccination) Order 1972, SI 1972/1509; and PARA 1051.

5 See the Foot-and-Mouth Disease (Control of Vaccination) (England) Regulations 2006, SI 2006/183; and the Foot-and-Mouth Disease (Control of Vaccination) (Wales) Regulations 2006, SI 2006/180.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1063 Vaccination

NOTE 5--SI 2006/183 amended: SI 2009/2712. SI 2006/180 amended: SI 2010/619.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(iv) Foot-and-Mouth Disease/1064. Slaughter of vaccinated animals.

1064. Slaughter of vaccinated animals.

The Secretary of State or the Welsh Ministers¹ may cause to be slaughtered any animal which has been treated with vaccine for the purpose of preventing the spread of foot-and-mouth disease². This power extends to taking any action which is required to enable any such animal to be slaughtered, or which is otherwise required in connection with the slaughter³.

For any animal so slaughtered the Secretary of State or the Welsh Ministers must pay compensation as follows⁴:

- 242 (1) if the animal was affected with the disease, to the value of the animal immediately before it became so affected⁵;
- 243 (2) in any other case, to the value of the animal immediately before it was slaughtered⁶.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 Animal Health Act 1981 s 16A(1), (2) (s 16A added by the Animal Health Act 2002 s 5). This applies also to any other disease which the Secretary of State or the Welsh Ministers may by order specify: Animal Health Act 1981 s 14A(1); and see PARA 1090.

3 Animal Health Act 1981 s 16A(3) (as added: see note 2).

4 Animal Health Act 1981 s 16A(4), (5) (as added: see note 2).

5 Animal Health Act 1981 s 16A(5)(a) (as added: see note 2). In arriving at a value for this purpose no account is to be taken of the fact that the animal had been treated with vaccine: s 16A(7) (as so added).

6 Animal Health Act 1981 s 16A(5)(b) (as added: see note 2). See also note 5.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(iv) Foot-and-Mouth Disease/1065. Tests and samples: power of entry.

1065. Tests and samples: power of entry.

A veterinary inspector¹ may at any time enter any premises² for the purpose of ascertaining (1) whether anti-bodies of foot-and-mouth disease³ exist in animals on the premises; (2) whether any animal on the premises or which was kept there at any time is, or was at that time, infected with disease; or (3) whether any causative agent⁴ of disease is present on the premises⁵.

A justice of the peace may issue a warrant authorising a constable or an inspector to enter premises for that purpose, if he is satisfied on sworn information⁶ in writing that the condition in head (1) below is satisfied, and either the condition in head (2) or the condition in head (3) is satisfied⁷. Those conditions are that:

- 244 (1) there are reasonable grounds for an inspector to enter the land or premises for that purpose⁸;
- 245 (2) the occupier of the premises (a) has been informed of the decision to seek entry to the premises and of the reasons for that decision; (b) has failed to allow entry to the premises on being requested to do so by an inspector; and (c) has been informed of the decision to apply for the warrant⁹;
- 246 (3) either (a) the premises are unoccupied or the occupier is absent and (in either case) notice of intention to apply for the warrant has been left in a conspicuous place on the premises; or (b) an application for admission to the premises or the giving of notice of intention to apply for the warrant would defeat the object of entering the premises¹⁰.

The warrant may authorise the use, if necessary, of reasonable force¹¹.

Where a veterinary inspector enters any premises by virtue of any of the provisions described above, he may take with him such other persons as he thinks necessary to give him such assistance as he thinks necessary, and such equipment as he thinks necessary¹². He may require any person on the land or premises who is the occupier, who appears to have charge of animals on the premises, or who appears to be under the direction or control of the occupier or such a person, to give him such assistance as he may reasonably require¹³, may take such samples (including samples from any animal on the premises) and may carry out such tests as he thinks are necessary for the purpose for which he entered¹⁴. If he enters any unoccupied premises he must leave them as effectively secured against entry as he found them¹⁵.

1 As to veterinary inspectors (ie inspectors appointed by the Secretary of State or the Welsh Ministers) see PARA 1120. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 'Premises' includes any land, building or other place: Animal Health Act 1981 s 62D(5) (ss 62D-62F added by the Animal Health Act 2002 s 9).

3 See the Animal Health Act 1981 s 62D(2) (as added: see note 2). This applies also to any other disease which the Secretary of State or the Welsh Ministers may by order specify: s 62D(2) (as so added). See PARA 1097.

4 'Causative agent' includes any virus, bacterium and any other organism or infectious substance which may cause or transmit disease: Animal Health Act 1981 s 62D(4) (as added: see note 2).

5 Animal Health Act 1981 s 62D(1) (as added: see note 2).

6 The information must include (1) a statement as to whether any representations have been made by the occupier of the land or premises to an inspector concerning the purpose for which the warrant is sought; and (2) a summary of any such representations: Animal Health Act 1981 s 62E(2) (as added: see note 2).

7 Animal Health Act 1981 s 62E(1) (as added: see note 2). If the inspector enters any premises by virtue of such a warrant he must, at the time of entry, serve a copy of the warrant on the occupier of the premises, or (if the occupier is not on the premises) leave a copy of it in a conspicuous place on the premises: s 62F(7) (as so added).

A warrant remains in force for one month starting with the date of its approval by the justice of the peace; and the date must be clearly visible on the warrant: s 62E(6) (as so added). It must be executed only at a reasonable hour unless the inspector thinks that the case is one of urgency: s 62E(7) (as so added).

In relation to any premises to which entry is obtained by virtue of a warrant the Secretary of State or the Welsh Ministers must retain for a period of not less than 12 months (beginning with the day after entry) a copy of the warrant, and a copy of any record of the steps taken to effect entry to the premises and the actions taken on the premises by the inspector and any other person entering the premises with him: s 62E(8) (as so added).

8 Animal Health Act 1981 s 62E(3) (as added: see note 2).

9 Animal Health Act 1981 s 62E(4) (as added: see note 2).

10 Animal Health Act 1981 s 62E(5) (as added: see note 2).

11 Animal Health Act 1981 s 62E(1) (as added: see note 2).

12 Animal Health Act 1981 s 62F(1), (2) (as added: see note 2).

13 Animal Health Act 1981 s 62F(4), (5) (as added: see note 2). A person commits an offence if he is required to give assistance under s 62F(4), and fails to give it: s 62F(8) (as so added). As to the penalties for offences against the Act see PARA 1101.

14 Animal Health Act 1981 s 62F(3) (as added: see note 2).

15 Animal Health Act 1981 s 62F(6) (as added: see note 2).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1065 Tests and samples: power of entry

NOTES 1-5--In relation to Wales, Tuberculosis is specified as a disease for the purpose of the Animal Health Act 1981 s 62D: Tuberculosis (Testing and Powers of Entry) (Wales) Order 2008, SI 2008/2774.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(iv) Foot-and-Mouth Disease/1066. General provision as to foot-and-mouth disease.

1066. General provision as to foot-and-mouth disease.

Detailed provision has been made governing the action to be taken to prevent or control the spread of foot-and-mouth disease¹. Provision is made in detail as to notification, suspicion and investigation of the disease², and as to measures following confirmation of the disease³. Many activities are prohibited in such cases, or may be carried out only under licences granted by an inspector or the Secretary of State or the Welsh Ministers⁴. The Secretary of State and the Welsh Ministers have to ensure the dissemination of necessary information concerning restrictions and requirements imposed to control the spread of the disease⁵.

General powers are given (1) to veterinary inspectors to take action to prevent the spread of disease⁶; and (2) to inspectors appointed by the Secretary of State, the Welsh Ministers or a local authority if the owner or person in charge of any premises fails to carry out duties under these provisions⁷.

Contravention of these provisions, or of a licence issued thereunder, is an offence against the Animal Health Act 1981, as are a number of acts in relation to marks and notices required by the provisions referred to above⁸.

Provision is made prohibiting the bringing of certain materials used as packing into contact with animals⁹.

The import and export of animals, animal products, and semen, ova and embryos have from time to time been the subject of restriction¹⁰.

¹ See the Foot-and-Mouth Disease (England) Order 2006, SI 2006/182; and the Foot-and-Mouth Disease (Wales) Order 2006, SI 2006/179.

² See the Foot-and-Mouth Disease (England) Order 2006, SI 2006/182, Pt 2 (arts 9-20), Schs 1-3; and the Foot-and-Mouth Disease (Wales) Order 2006, SI 2006/179, Pt 2 (arts 9-20), Schs 1-3. This includes provision as to: notification of disease or suspected disease, or of suspicion of disease; veterinary inquiry into the existence of disease and declaration of suspect premises and infected premises; criteria for confirming disease; declaration as to separate production units; tracing of possible disease spread; declaration of a temporary control zone and measures applicable in respect of such a zone; declaration of a supplementary movement control zone and measures applicable in respect of such a zone; measures applicable in respect of premises on suspicion and confirmation of disease; measures as to the cleansing and disinfection of premises and vehicles.

³ See the Foot-and-Mouth Disease (England) Order 2006, SI 2006/182, Pt 3 (arts 21-41), Schs 3-8; and the Foot-and-Mouth Disease (Wales) Order 2006, SI 2006/179, Pt 3 (arts 21-41), Schs 3-8. This includes provision as to: tracing products originating on infected premises; notice of intention to slaughter animals; sampling and clinical examination of susceptible animals before slaughter; slaughter, control of carcasses etc, cleansing and disinfection of premises used for slaughter; restocking of premises after slaughter; declaration of protection zones and surveillance zones on confirmation of disease; provisions as to protection zones and surveillance zones; veterinary inspection of premises in protection zones and surveillance zones; power to prohibit entry to land or agricultural buildings in a protection zone; amendment and revocation of declarations creating protection zones and surveillance zones; declaration of a restricted zone and measures applicable in such a zone; the presence of disease in wild animals and declaration of a wild animal infected zone, and measures applicable in such a zone; treatments to ensure the destruction of disease virus.

⁴ As to licences generally see the Foot-and-Mouth Disease (England) Order 2006, SI 2006/182, arts 5, 42; and the Foot-and-Mouth Disease (Wales) Order 2006, SI 2006/179, arts 5, 42.

⁵ See the Foot-and-Mouth Disease (England) Order 2006, SI 2006/182, art 7; and the Foot-and-Mouth Disease (Wales) Order 2006, SI 2006/179, art 7.

6 See the Foot-and-Mouth Disease (England) Order 2006, SI 2006/182, art 55; and the Foot-and-Mouth Disease (Wales) Order 2006, SI 2006/179, art 55.

7 See the Foot-and-Mouth Disease (England) Order 2006, SI 2006/182, art 56; and the Foot-and-Mouth Disease (Wales) Order 2006, SI 2006/179, art 56. The execution and enforcement of the provisions of the Order are generally the responsibility of the local authority: see the Foot-and-Mouth Disease (England) Order 2006, SI 2006/182, art 59; and the Foot-and-Mouth Disease (Wales) Order 2006, SI 2006/179, art 59.

8 See the Animal Health Act 1981 s 73. As to the penalties for offences against the Animal Health Act 1981 see PARA 1101.

9 See the Foot-and-Mouth Disease (Packing Materials) Order of 1925, SR & O 1925/1178 (amended by SR & O 1926/42). Contravention of the Order is an offence against the Animal Health Act 1981: Foot-and-Mouth Disease (Packing Materials) Order of 1925, SR & O 1925/1178, art 3.

10 At the date at which this volume states the law, the most recent such restrictions were imposed by the Import and Export Restrictions (Foot-and-Mouth Disease) (No 6) Regulations 2007, SI 2007/3142 (revoked by SI 2007/3295), and the Import and Export Restrictions (Foot-and-Mouth Disease) (No 6) (Wales) Regulations 2007, SI 2007/3140 (revoked by SI 2007/3296); the Export and Movement Restrictions (Foot-and-Mouth Disease) (No 2) Regulations 2007, SI 2007/3435 (revoked by SI 2007/3513), and the Export and Movement Restrictions (Foot-and-Mouth Disease) (No 2) (Wales) Regulations 2007, SI 2007/3441 (revoked by SI 2007/3518); and the Export Restrictions (Foot-and-Mouth Disease) Regulations 2007, SI 2007/3513, and the Export Restrictions (Foot-and-Mouth Disease) (Wales) Regulations 2007, SI 2007/3518.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1066 General provision as to foot-and-mouth disease

NOTE 2--SI 2006/182 art 9 amended: SI 2009/2713.

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1067. Deliberate infection.

A person commits an offence if without lawful authority or excuse he knowingly does anything which causes or is intended to cause an animal to be infected with foot-and-mouth disease¹.

¹ See the Animal Health Act 1981 s 28A(1), Sch 2A; and PARA 1048.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(v) Scrapie/1068. Restrictions on breeding: sheep genotypes and genetically susceptible sheep.

(v) Scrapie

1068. Restrictions on breeding: sheep genotypes and genetically susceptible sheep.

The Secretary of State or the Welsh Ministers¹ may by order specify sheep genotypes which, in his or their opinion, are more susceptible than other sheep genotypes (1) to infection by transmissible spongiform encephalopathies generally, or by a particular form of transmissible spongiform encephalopathy; or (2) to becoming carriers².

The Secretary of State or the Welsh Ministers may by regulations make provision requiring the keeper³ of any sheep (a) to allow an inspector to take a sample from it, for the purpose of establishing its genotype; (b) to allow an inspector to administer or otherwise attach to it an electronic identification device; (c) where the genotype of the sheep has been established⁴ to keep a record of its genotype⁵.

Where it appears to the Secretary of State or the Welsh Ministers that a sheep is of a genotype specified in an order as described above, they must consider whether there are exceptional circumstances⁶ that justify allowing the sheep to be used for breeding⁷. If it appears to them that allowing the sheep to be used for breeding would not be justified, they must give notice (a 'restriction notice')⁸ to its keeper⁹ that the following provisions apply¹⁰:

- 247 (i) he must not use a sheep to which the notice applies, or its semen, eggs or embryos, for purposes of or connected with breeding, or cause or permit such a sheep or such semen, eggs or embryos to be used by another person for those purposes¹¹;
- 248 (ii) he must arrange for any semen, egg or embryo which has at any time been taken from a sheep to which the notice applies, and which is in his possession or under his control, to be destroyed¹²;
- 249 (iii) he must arrange for each sheep to which the notice applies to be castrated or (as appropriate) sterilised before the end of the period of one month beginning with the date on which the notice was given, or to be slaughtered before the end of the period of seven months beginning with that date¹³.

A person to whom a restriction notice has been given may within 21 days¹⁴ appeal to an assessor¹⁵ against the notice¹⁶. If the assessor allows the appeal, in whole or in part, he may (A) revoke the notice; (B) revoke it so far as it applies to one or more sheep specified by him; or (C) direct that a further test is carried out in relation to sheep specified by him¹⁷. The revocation of a restriction notice (in whole or in part) by an assessor does not prevent the issue of another restriction notice, following the testing of a further sample¹⁸.

A person to whom a restriction notice is given commits an offence (whether or not the notice is the subject of an appeal) if he sells (or otherwise transfers to another person) a sheep to which the notice applies, or any of its semen, eggs or embryos; or if he fails, without reasonable excuse¹⁹ to comply with any of the restrictions or requirements imposed as described in heads (A) to (C) above²⁰. Any other person commits an offence if he uses any semen, egg or embryo which he knows, or has reasonable cause to believe, has been taken from a sheep which is the subject of a restriction notice²¹.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 Animal Health Act 1981 s 36A (ss 36A-36M added by the Animal Health Act 2002 s 6, Schedule). At the date at which this volume states the law, no such order had been made. As to transmissible spongiform encephalopathies ('TSE') generally see PARA 1071.

3 'Keeper', in relation to a sheep, includes an owner of the sheep: Animal Health Act 1981 s 36M (as added: see note 2).

4 Ie whether or not as a result of the exercise of powers conferred by the Animal Health Act 1981 Pt IIA (ss 36A-36M).

5 Animal Health Act 1981 s 36B(1) (as added: see note 2). As to the functions and powers of inspectors see PARA 1096. The regulations may, in particular (1) provide that only electronic identification devices of a prescribed kind may be administered or attached; (2) make provision as to the assistance which an inspector may require the keeper to give to him; (3) make provision with respect to the testing of samples; and (4) require the issuing and keeping of certificates recording the genotypes of sheep: s 36B(2) (as so added). A person commits an offence if, without reasonable excuse (proof of which lies on him), he fails to comply with any provision of such regulations: s 36F(3) (as so added). At the date at which this volume states the law, no such regulations had been made. As to the penalties for offences against the Act see PARA 1101.

6 'Exceptional circumstances' include circumstances in which the imposition in relation to the sheep of the restrictions and requirements of the Animal Health Act 1981 s 36C(7)-(9) (see text and notes 11-13) is likely to cause the extinction of the breed of which the sheep is a member: s 36C(10) (as added: see note 2).

7 Animal Health Act 1981 s 36C(1), (2) (as added: see note 2).

8 A restriction notice may be made so as to apply to more than one sheep, and may describe the sheep to which it applies in such a way as the Secretary of State or the Welsh Ministers consider appropriate: Animal Health Act 1981 s 36C(4) (as added: see note 2).

9 If the keeper of a sheep is not the same person as its owner, the Secretary of State or the Welsh Ministers may give a separate restriction notice to the owner: Animal Health Act 1981 s 36C(5) (as added: see note 2). The provisions of s 36C(7)-(9) apply to a person to whom a restriction notice is given: s 36C(6) (as so added).

10 Animal Health Act 1981 s 36C(3) (as added: see note 2).

11 Animal Health Act 1981 s 36C(7) (as added: see note 2).

12 Animal Health Act 1981 s 36C(8) (as added: see note 2).

13 Animal Health Act 1981 s 36C(9) (as added: see note 2). See also note 16.

14 The Secretary of State or the Welsh Ministers may, in a particular case, extend the period of 21 days if they consider that there are exceptional circumstances justifying the extension: Animal Health Act 1981 s 36D(3) (as added: see note 2).

15 Ie a person appointed by the Secretary of State or the Welsh Ministers for the purpose of dealing with appeals under the Animal Health Act 1981 Pt IIA: s 36D(1) (as added: see note 2).

16 Animal Health Act 1981 s 36D(1), (2) (as added: see note 2). If the restriction notice applies to more than one sheep, the appeal may be limited to the sheep specified by the appellant: s 36D(4) (as so added).

The Secretary of State or the Welsh Ministers may make regulations in relation to appeals, in particular (1) making provision as to procedure; (2) extending the time limits for the castration or sterilisation required by a restriction notice (see text and note 13) where an appeal is pending; (3) requiring the appellant to meet the reasonable costs of, and in connection with, the taking of a further sample or the carrying out of a further test as a result of a direction under head (c) in the text; and (4) as to the recovery of any such costs: s 36D(7), (8) (as so added). At the date at which this volume states the law, no such regulations had been made.

17 Animal Health Act 1981 s 36D(5) (as added: see note 2). A direction under head (c) in the text may require (1) a further sample to be taken; (2) the further test to be carried out by a different testing laboratory: s 36D(6) (as so added). See also note 16.

18 Animal Health Act 1981 s 36D(9) (as added: see note 2).

19 Proof of lawful authority or excuse lies on the accused: Animal Health Act 1981 s 36F(1) (as added: see note 2).

20 Animal Health Act 1981 s 36F(1) (as added: see note 2). As to the penalties for offences against the Act see PARA 1101.

21 Animal Health Act 1981 s 36F(2) (as added: see note 2).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(v) Scrapie/1069. Enforcement and compensation.

1069. Enforcement and compensation.

If the Secretary of State or the Welsh Ministers¹ are satisfied that a person to whom a restriction notice² has been given has failed to comply with one or more of the restrictions or requirements imposed on him³, they may take such reasonable steps as they consider appropriate to secure that the failure is remedied⁴. In particular, they may cause to be castrated (or as appropriate sterilised) or slaughtered any sheep which is the subject of the notice, but which has neither been castrated (or as appropriate sterilised) nor slaughtered within the required period⁵. However, the provisions described above do not apply in relation to any sheep which is the subject of an appeal which has not been disposed of, or which, as the result of a successful appeal, is no longer subject to the restriction notice⁶.

An inspector⁷ or a constable may at all reasonable times enter any premises⁸ for the purpose of carrying out any function he has under or in pursuance of Part IIA of the Animal Health Act 1981⁹, or ascertaining whether any such function should be exercised¹⁰. He must, if required, show evidence of his authority to act¹¹.

A justice of the peace may issue a warrant authorising a constable or an inspector to enter premises for that purpose, if he is satisfied on sworn information¹² in writing that the condition in head (1) below is satisfied, and either the condition in head (2) or the condition in head (3) is satisfied¹³. Those conditions are that:

- 250 (1) there are reasonable grounds for an inspector to enter the land or premises for that purpose¹⁴;
- 251 (2) the occupier of the premises (a) has been informed of the decision to seek entry to the premises and of the reasons for that decision; (b) has failed to allow entry to the premises on being requested to do so by an inspector; and (c) has been informed of the decision to apply for the warrant¹⁵;
- 252 (3) either (a) the premises are unoccupied or the occupier is absent and (in either case) notice of intention to apply for the warrant has been left in a conspicuous place on the premises; or (b) an application for admission to the premises or the giving of notice of intention to apply for the warrant would defeat the object of entering the premises¹⁶.

The warrant may authorise the use, if necessary, of reasonable force¹⁷.

Where an inspector enters any land or premises by virtue of any of the provisions described above, he may take with him such other persons as he thinks necessary to give him such assistance as he thinks necessary, and such equipment as he thinks necessary¹⁸. He may require any person on the land or premises who is the occupier, who appears to have charge of animals on the premises, or who appears to be under the direction or control of the occupier or such a person, to give him such assistance as he may reasonably require¹⁹. If he enters any unoccupied premises he must leave them as effectively secured against entry as he found them²⁰.

An authorised person may inspect any records (in whatever form they are held) relating to the keeping, acquisition or disposal of animals; and may seize and detain any records which he reasonably thinks may be needed as evidence in any proceedings under or by virtue of the Animal Health Act 1981²¹.

A person commits an offence if without lawful authority or excuse²² he refuses admission to any premises to a person acting under the provisions described above, or obstructs or impedes him in so acting, or assists in any such obstruction or impeding²³.

A person commits an offence if he obstructs an inspector or any other person discharging, or attempting to discharge, functions conferred by or under Part IIA of the Act²⁴.

The Secretary of State or the Welsh Ministers may make regulations providing for the payment by him or them of compensation in respect of loss suffered or costs incurred as a result of the exercise of a power conferred by or under Part IIA of the Animal Health Act 1981 (prevention of scrapie)²⁵.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 As to the meaning of 'restriction notice' see PARA 1068.

3 Animal Health Act 1981 s 36E(1) (ss 36A-36M added by the Animal Health Act 2002 s 6, Schedule).

4 Animal Health Act 1981 s 36E(3) (as added: see note 3). The Secretary of State or the Welsh Ministers may make regulations supplementing the provisions of s 36E: s 36E(5) (as so added). At the date at which this volume states the law, no such regulations had been made.

5 Animal Health Act 1981 s 36E(4) (as added: see note 3). As to the required period see head (iii) in the text to PARA 1068.

6 Animal Health Act 1981 s 36E(2) (as added: see note 3).

7 As to the powers and functions of inspectors see PARA 1096.

8 This does not apply to premises used only as a private dwelling-house unless 24 hours' notice of the intended entry is given to the occupier: Animal Health Act 1981 s 36G(2) (as added: see note 3). 'Premises' includes any land, building or other place: s 36M (as so added).

9 I.e. the Animal Health Act 1981 ss 36A-36M.

10 Animal Health Act 1981 s 36G(1) (as added: see note 3).

11 Animal Health Act 1981 s 36G(3) (as added: see note 3).

12 The information must include (1) a statement as to whether any representations have been made by the occupier of the land or premises to an inspector concerning the purpose for which the warrant is sought; and (2) a summary of any such representations: Animal Health Act 1981 s 36H(2) (as added: see note 3).

13 Animal Health Act 1981 s 36H(1) (as added: see note 3). If the inspector enters any premises by virtue of such a warrant he must, at the time of entry, serve a copy of the warrant on the occupier of the premises, or (if the occupier is not on the premises) leave a copy of it in a conspicuous place on the premises: s 36I(7) (as so added).

A warrant remains in force for one month starting with the date of its approval by the justice of the peace; and the date must be clearly visible on the warrant: s 36H(6) (as so added). It must be executed only at a reasonable hour unless the inspector thinks that the case is one of urgency: s 36H(7) (as so added).

In relation to any premises to which entry is obtained by virtue of a warrant the Secretary of State or the Welsh Ministers must retain for a period of not less than 12 months (beginning with the day after entry) a copy of the warrant, and a copy of any record of the steps taken to effect entry to the premises and the actions taken on the premises by the inspector and any other person entering the premises with him: s 36H(8) (as so added).

14 Animal Health Act 1981 s 36H(3) (as added: see note 3).

15 Animal Health Act 1981 s 36H(4) (as added: see note 3).

16 Animal Health Act 1981 s 36H(5) (as added: see note 3).

17 Animal Health Act 1981 s 36H(1) (as added: see note 3).

18 Animal Health Act 1981 s 36I(1), (2) (as added: see note 3).

19 Animal Health Act 1981 s 36I(3), (4) (as added: see note 3). A person commits an offence if he is required to give assistance under s 36I(3), and fails to give it: s 36J(2) (as so added). As to the penalties for offences against the Act see **PARA 1101**.

20 Animal Health Act 1981 s 36I(6) (as added: see note 3).

21 Animal Health Act 1981 s 36I(5) (as added: see note 3).

22 Proof of lawful authority or excuse lies on the accused: Animal Health Act 1981 s 36J(1) (as added: see note 3).

23 Animal Health Act 1981 s 36J(1) (as added: see note 3).

24 Animal Health Act 1981 s 36F(4) (as added: see note 3).

25 Animal Health Act 1981 s 36K (added by the Animal Health Act 2002 s 6, Schedule). As to income tax in relation to compensation see **INCOME TAXATION** vol 23(1) (Reissue) **PARA 279**.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) **PARA 733**. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) **PARA 196A**.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(vi) Bluetongue/1070. Bluetongue.

(vi) Bluetongue

1070. Bluetongue.

Provision is made for the control and eradication of bluetongue¹. In particular, provision is made:

- 253 (1) for licensing²;
- 254 (2) for the initial requirements where an animal or carcase is known or suspected to be infected with bluetongue, and, in particular, for the reporting of symptoms³;
- 255 (3) for the establishment of restrictions on premises where the bluetongue virus is known or suspected to exist⁴;
- 256 (4) for the confirmation of the existence of bluetongue on any premises, and the measures to be taken⁵;
- 257 (5) for the declaration of zones and for restrictions on movement of animals etc⁶;
- 258 (6) in relation to slaughterhouses⁷;
- 259 (7) in relation to vaccination⁸.

Provision is also made for enforcement⁹ and exemptions¹⁰.

¹ See the Bluetongue Regulations 2008, SI 2008/962; and the Bluetongue (Wales) Regulations 2008, SI 2008/1090.

² See the Bluetongue Regulations 2008, SI 2008/962, regs 4, 5; and the Bluetongue (Wales) Regulations 2008, SI 2008/1090, regs 4, 5.

³ See the Bluetongue Regulations 2008, SI 2008/962, reg 8; and the Bluetongue (Wales) Regulations 2008, SI 2008/1090, reg 8.

⁴ See the Bluetongue Regulations 2008, SI 2008/962, reg 9; and the Bluetongue (Wales) Regulations 2008, SI 2008/1090, reg 9.

⁵ See the Bluetongue Regulations 2008, SI 2008/962, regs 11, 12; and the Bluetongue (Wales) Regulations 2008, SI 2008/1090, regs 11, 12.

⁶ See the Bluetongue Regulations 2008, SI 2008/962, regs 6, 7, 10, 13, 15; and the Bluetongue (Wales) Regulations 2008, SI 2008/1090, regs 6, 7, 10, 13, 15. Zones may be declared in England or Wales when bluetongue is confirmed elsewhere: see the Bluetongue Regulations 2008, SI 2008/962, reg 16; and the Bluetongue (Wales) Regulations 2008, SI 2008/1090, reg 16.

⁷ See the Bluetongue Regulations 2008, SI 2008/962, reg 14; and the Bluetongue (Wales) Regulations 2008, SI 2008/1090, reg 14.

⁸ See the Bluetongue Regulations 2008, SI 2008/962, regs 17-19; and the Bluetongue (Wales) Regulations 2008, SI 2008/1090, regs 17-19 (reg 17 amended by SI 2008/1583).

⁹ See the Bluetongue Regulations 2008, SI 2008/962, regs 20-27; and the Bluetongue (Wales) Regulations 2008, SI 2008/1090, regs 20-27.

¹⁰ See the Bluetongue Regulations 2008, SI 2008/962, regs 3, 28; and the Bluetongue (Wales) Regulations 2008, SI 2008/1090, regs 3, 28.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1070 Bluetongue

NOTES 3, 5--SI 2008/962 regs 8, 11 amended: SI 2009/2712 (England). SI 2008/1090 regs 8, 11 amended: SI 2010/619 (Wales).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(vii) Transmissible Spongiform Encephalopathies/1071. Transmissible spongiform encephalopathies.

(vii) Transmissible Spongiform Encephalopathies

1071. Transmissible spongiform encephalopathies.

Provision is made for the administration and enforcement of European legislation¹ in relation to certain transmissible spongiform encephalopathies ('TSE')². Detailed requirements are set down in relation to:

- 260 (1) TSE monitoring, including notifications, approval of Required Method of Operation ('RMOP') for slaughterhouses and their occupiers, brain stem sampling of bovine animals, slaughter, retention and disposal of carcasses and body parts, compensation, procedures for animal identification and separation³;
- 261 (2) the control and eradication of TSE, including further provisions as to notifications, restriction of notified animals, movement restrictions on sheep or goats, slaughter of a suspect animal, identification and restriction of offspring and cohorts of suspected animals, action following confirmation or non-confirmation of infection, common grazing for sheep or goats, the death of an animal while under restriction, the offence of placing progeny of affected animals on the market, and compensation⁴;
- 262 (3) animal feedingstuffs, including the prohibition on feeding animal protein to farmed animals, prohibition or restriction on movement of TSE susceptible animals, slaughter of animals suspected of having been fed prohibited material, compensation, procedures for the production of protein and feedingstuffs⁵;
- 263 (4) specified risk material, mechanically recovered meat and slaughtering techniques⁶;
- 264 (5) restrictions on the dispatch to other member states and to third countries of animals and animal products⁷.

Exceptions are provided for research⁸. Provision is made as to approvals, authorisations, licences and registrations and their suspension and amendment or revocation⁹, the duty of occupiers of premises approved, authorised, licensed or registered under the regulations¹⁰, valuations¹¹, the appointment and powers of inspectors¹², and notices¹³. Intentional obstruction of an inspector, physically or in the provision of information, is an offence¹⁴.

1 le EC Parliament and Council Regulation 999/2001 (OJ L147, 31.5.2001, p 1), laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies.

2 See the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228 (amended by SI 2007/1998; SI 2008/1180). These regulations replace the various regulations previously in force regarding the control of bovine spongiform encephalopathy ('BSE'), and extend beyond cattle to other TSE susceptible animals. The Secretary of State enforces the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228, Sch 2 in slaughterhouses and cutting plants (reg 20(1)); the Food Standards Agency enforces Sch 6 in slaughterhouses and cutting plants (reg 20(2)); and otherwise the regulations are enforced by the local authority (reg 20(3)). However, the Secretary of State may direct, in relation to cases of a particular description or any particular case, that an enforcement duty imposed on the local authority is to be discharged by the Secretary of State and not by the local authority (reg 20(4)). As to the Secretary of State see PARA 705. As to the Food Standards Agency see **FOOD**. 'Local authority' means (1) in any part of England where there is a unitary authority for that local government area within the meaning of the Local Government Changes for England Regulations 1994, SI 1994/867, that authority; (2) where there is not a unitary authority, (a) in a metropolitan district, the council of that district; (b) in a non-metropolitan county, the council of that county; (c)

in each London borough, the council of that borough; or (3) in the City of London, the Common Council: Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228, reg 2(1). 'TSE' means transmissible spongiform encephalopathy: reg 2(1).

Provision corresponding to those regulations, and thus to the provisions mentioned in the text and notes, is made in relation to Wales by the Transmissible Spongiform Encephalopathies (Wales) Regulations 2006, SI 2006/1226 (amended by SI 2007/2244; SI 2008/1182). In Wales, the enforcing authority is the Welsh Ministers (Transmissible Spongiform Encephalopathies (Wales) Regulations 2006, SI 2006/1226, reg 3) and enforcement is the duty of the Welsh Ministers, the Food Standards Agency or the local authority (see reg 24). 'Local authority' means the council of any county or county borough in Wales: reg 2(1).

As to compensation see the Bovine Spongiform Encephalopathy (BSE) Compensation (Wales) Regulations 2006, SI 2006/1512; and the Sheep and Goats Transmissible Spongiform Encephalopathy (TSE) Compensation (Wales) Regulations 2006, SI 2006/1513.

3 See the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228, reg 5(a), Sch 2. As to income tax in relation to compensation see **INCOME TAXATION** vol 23(1) (Reissue) PARA 279.

4 See the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228, reg 5(b), (c), Schs 3, 4. See also the Older Cattle (Disposal) (England) Regulations 2005, SI 2005/3522; and the Older Cattle (Disposal) (Wales) Regulations 2006, SI 2006/62. See also *Feakins v Secretary of State for the Environment, Food and Rural Affairs* [2002] EWHC 2574 (Admin), [2002] All ER (D) 333 (Dec).

5 See the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228, reg 5(d), Sch 5; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 1011-1012; **FOOD**.

6 See the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228, reg 5(e), Sch 6 (Sch 6 substituted by SI 2008/1180); and **FOOD**.

7 See the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228, reg 5(f), Sch 7 (Sch 7 amended by SI 2008/1180).

8 See the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228, reg 4.

9 See the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228, regs 6, 8, 9. An appeal procedure is provided by reg 10. Generally the Secretary of State is the competent authority: reg 3.

10 See the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228, reg 7.

11 See the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228, reg 11.

12 See the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228, regs 12-14.

13 See the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228, regs 15, 16.

14 See the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228, reg 17. As to offences by a body corporate see reg 19. A person guilty of an offence under the regulations is liable, on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term of three months or both; or, on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both: reg 18. As to the statutory maximum see PARA 877 note 6.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1071 Transmissible spongiform encephalopathies

TEXT AND NOTES--SI 2006/1228 replaced: Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881 (amended by SI 2008/2269, SI 2008/3295). SI 2006/1226, SI 2006/1512, SI 2006/1513 replaced: Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2008/3266, SI 2009/192).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(viii) Infected Places and Areas/1072. Infected places and areas generally.

(viii) Infected Places and Areas

1072. Infected places and areas generally.

The Secretary of State or the Welsh Ministers¹ may make orders² prescribing the cases in which places and areas are to be declared infected with a disease³, and the authority, mode and conditions by, in and on which such declarations are to be made, their effect, consequences, duration and discontinuance, and other relevant matters⁴.

Whilst the provisions vary for different diseases, the general position is that 'infected places'⁵ are premises declared to be infected places by local authority inspectors, whilst 'infected areas'⁶ surrounding infected places, with defined boundaries situated a certain number of miles distant from the infected places, are declared by special order of the Secretary of State or the Welsh Ministers. In addition, in the case of foot-and-mouth disease, the Secretary of State or the Welsh Ministers may by special order declare an area surrounding an infected area to be a 'restricted infected area' or 'controlled area'⁷.

The owner or person in charge of animals in an infected place or area may affix a notice there forbidding persons who have by law no right of entry or way to enter without permission⁸.

The Secretary of State or the Welsh Ministers may make orders⁹ prescribing and regulating the publication by placards, handbills or otherwise, in the immediate neighbourhood of an infected place or area, of the fact of the declaration; prohibiting or regulating the movement of animals and persons into, within or out of an infected place or area¹⁰; regulating the isolation and separation of animals there; prohibiting or regulating the removal of carcasses, fodder, litter¹¹, utensils, pens, hurdles, dung or other things into, within or out of an infected place or area, and regulating their destruction, burial, disposal or treatment; and regulating the cleansing and disinfection of infected places and areas and of the clothes of persons in infected places, and the use of precautions against the spreading of disease by such persons¹².

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 See the Cattle Plague Order of 1928, SR & O 1928/206 (amended by SR & O 1938/194; SI 1977/944); the Pleuro-Pneumonia Order of 1928, SR & O 1928/205 (amended by SR & O 1938/195; SI 1977/944); the Swine Fever Order 1963, SI 1963/286 (amended by SI 1976/919; SI 1990/2487; SI 1991/1030; SI 1995/11; SI 1995/2922); the Swine Vesicular Disease Order 1972, SI 1972/1980 (amended by SI 1973/101; SI 1977/944; SI 1993/3119); the Rabies (Control) Order 1974, SI 1974/2212 (amended by SI 1995/2922); the Warble Fly (England and Wales) Order 1982, SI 1982/234 (amended by SI 1985/328; SI 1987/1601; SI 1989/244; SI 1994/3142; and SI 2006/2407); the Aujeszky's Disease Order 1983, SI 1983/344 (amended by SI 1994/3141; SI 1995/11; and SI 1995/2922); the Warble Fly (England and Wales) (Infected Areas) Order 1985, SI 1985/1542 (amended by SI 1994/3142); the Infectious Diseases of Horses Order 1987, SI 1987/790 (amended by SI 1992/3159; and SI 1995/2922); the Zoonoses Order 1989, SI 1989/285; the Anthrax Order 1991, SI 1991/2814 (amended by SI 1995/2922; SI 1996/1855); the Movement of Animals (Restrictions) (England) Order 2002, SI 2002/3229; the Movement of Animals (Restrictions) (Wales) Order 2003, SI 2003/399; the Diseases of Poultry (England) Order 2003, SI 2003/1078 (amended by SI 2006/1197, so as not to apply to avian influenza); the Diseases of Poultry (Wales) Order 2003, SI 2003/1079 (amended by SI 2006/1762, so as not to apply to avian influenza); the Classical Swine Fever (England) Order 2003, SI 2003/2329; the Classical Swine Fever (Wales) Order 2003, SI 2003/2456; the African Swine Fever (England) Order 2003, SI 2003/2913; the African Swine Fever (Wales) Order 2003, SI 2003/3273; the Foot-and-Mouth Disease (England) Order 2006, SI 2006/182; the Foot-and-Mouth Disease (Wales) Order 2006, SI 2006/179; the Bluetongue (No 2) Order 2007, SI 2007/3304 (amended by SI 2008/962); and the Bluetongue (No 2) (Wales) Order 2007, SI 2007/3309 (amended by SI 2008/1090).

See also the Avian Influenza and Influenza of Avian Origin in Mammals (England) (No 2) Order 2006, SI 2006/2702; the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006, SI 2006/2927; the Avian Influenza (H5N1 in Poultry) (England) Order 2006, SI 2006/3247 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006, SI 2006/3309 (amended by SI 2007/3375); the Avian Influenza (H5N1 in Wild Birds) (England) Order 2006, SI 2006/3249 (amended by SI 2007/3303); and the Avian Influenza (H5N1 in Wild Birds) (Wales) Order 2006, SI 2006/3310 (amended by SI 2007/3375).

3 As to the meaning of 'disease' see PARA 1042.

4 Animal Health Act 1981 s 17(1). Upon such a declaration being made the place or area becomes an infected place or area: s 17(2). The Secretary of State or the Welsh Ministers may, on inquiry and after consulting the local authority, cancel the declaration, whereupon, or if the place or area is declared free of disease, it ceases to be an infected place or area: s 18(1), (2). Orders of the Secretary of State, the Welsh Ministers or a local authority under these provisions, and notices served under directions of the Secretary of State, the Welsh Ministers or a local authority by virtue of an order of the Secretary of State or the Welsh Ministers, are conclusive evidence of the matters whereon the orders or notices proceeded: ss 17(3), 18(3).

5 See PARA 1073.

6 See PARA 1074.

7 See PARAS 1066, 1074.

8 Animal Health Act 1981 s 27. Disobedience is an offence under s 72(b): see PARA 1100.

9 See the orders cited in note 2.

10 The offence is complete as soon as an animal is moved in contravention of the order: see *R v Williams* (1866) 15 LT 290. As to the justices' jurisdiction see also *Midland Rly Co v Freeman* (1884) 12 QBD 629, and, generally, **MAGISTRATES**.

11 'Carcase' means the carcase of an animal (as defined in PARA 1041) and includes part of a carcase, and the meat, bones, hide, skin, hooves, offal or other part of an animal, separately or otherwise, or any portion thereof; 'fodder' means hay or other substance commonly used for food of animals; and 'litter' means straw or other substance commonly used for bedding or otherwise for or about animals: Animal Health Act 1981 s 89(1).

12 Animal Health Act 1981 s 23. Where anything destroyed, buried or disposed of under such an order could have been seized under s 35(1), compensation is payable as if it had been so seized: s 36(4); see PARA 1093.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1072 Infected places and areas generally

NOTE 2--SI 1972/1980 (as amended) replaced by Swine Vesicular Disease Regulations 2009, SI 2009/1299 (England); Swine Vesicular Disease (Wales) Regulations 2009, SI 2009/1372: see PARA 1042. SI 1974/2212, SI 2003/2913 amended: see PARA 1042. SI 1983/344, SI 1987/790, SI 1991/2814 further amended: see PARA 1041. SI 2003/399 amended: see PARA 1041. SI 2003/1078 further amended: see PARA 1052. SI 2003/2329 amended: see PARA 1049. SI 2006/182, SI 2006/2702 amended: see PARA 868.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(viii) Infected Places and Areas/1073. Infected places.

1073. Infected places.

The consequences of a declaration that premises are an 'infected place' vary according to the disease¹.

Typically, a divisional veterinary manager notified of the existence of certain diseases, or who suspects that such a disease exists or has within a prescribed period existed on any premises, must give notice to the veterinary inspector unless this has already been done, and serve notice on the occupier of the premises, whereupon the premises become an infected place until the notice is withdrawn².

Movement and activity in infected places are typically governed by rules, which vary according to the disease. Commonly appearing rules regulate (or prohibit) the movement of animals save under licence; the removal of carcasses, fodder, litter, dung or other things save under licence or with permission; and the removal of milk or other products without permission. They may require premises and vehicles to be disinfected³.

1 As to the declaration of an infected place see PARA 1072.

2 See the orders cited in PARA 1072 note 2.

3 See the detailed provision contained in the orders cited in PARA 1072 note 2.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1073 Infected places

TEXT AND NOTE 2--Post of divisional veterinary manager abolished: see PARA 1120.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(viii) Infected Places and Areas/1074. Infected and controlled areas.

1074. Infected and controlled areas.

The movement of animals and activities connected therewith in relation to infected areas¹ (or in relation to foot-and-mouth disease, restricted infected areas or controlled areas²) are governed by rules which vary according to the disease³.

Movement and activity in infected places are typically governed by rules, which vary according to the disease. Commonly appearing rules may prohibit, except under licence, the movement of animals out of, into, within or through infected areas; make provision as to the control of animals during and after movement; govern the issue of licences; and restrict the holding of markets and gatherings of animals⁴.

1 As to infected areas see PARA 1072.

2 See PARA 1066.

3 Such rules are set out in orders made under the Animal Health Act 1981 s 17; see PARA 1072.

4 See the detailed provision contained in the orders cited in PARA 1072 note 2.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(ix) Regulation of Movement/1075. Diseased animals at market, in transit or on open land.

(ix) Regulation of Movement

1075. Diseased animals at market, in transit or on open land.

The Secretary of State or the Welsh Ministers¹ may make orders² respecting animals affected with pleuro-pneumonia or foot-and-mouth disease while exposed for sale or exhibited in a market, fair, sale-yard, place of exhibition or other place; or while placed in a lair or other place before exposure for sale; or while in transit or in course of being moved by land, air or water; or while in a slaughterhouse or place where animals are slaughtered or are kept with a view to slaughter; or while on common or uninclosed land³; or generally while in a place not in the possession or occupation or under the control of the owner of the animals⁴.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 See the Pleuro-Pneumonia Order of 1928, SR & O 1928/205 (amended by SR & O 1938/195; and SI 1977/944); and the Foot-and-Mouth Disease (England) Order 2006, SI 2006/182; and the Foot-and-Mouth Disease (Wales) Order 2006, SI 2006/179. These provisions have also been applied so as to apply to certain other diseases: see the Swine Vesicular Disease Order 1972, SI 1972/1980 (amended by SI 1973/101; SI 1977/944; SI 1993/3119); the African Swine Fever (England) Order 2003, SI 2003/2913; and the African Swine Fever (Wales) Order 2003, SI 2003/3273.

3 In *Jemmison v Priddle* [1972] 1 QB 489, [1972] 1 All ER 539, DC, it was held that 'inclosed land' under the Game Licences Act 1860 s 5 (repealed in relation to England and Wales), meant farmland as opposed to moorland.

4 Animal Health Act 1981 s 26(1).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1075 Diseased animals at market, in transit or on open land

NOTE 2--SI 1972/1980 (as amended) replaced by Swine Vesicular Disease Regulations 2009, SI 2009/1299 (England); Swine Vesicular Disease (Wales) Regulations 2009, SI 2009/1372: see PARA 1042. SI 2003/2913 amended: see PARA 1042. SI 2006/182 amended: see PARA 868.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(ix) Regulation of Movement/1076. Movement of animals generally.

1076. Movement of animals generally.

The Secretary of State or the Welsh Ministers¹ may by order² prescribe and regulate the marking of animals, prohibit or regulate the movement of animals, and the removal of carcasses, fodder, litter³, dung and other things, and regulate the isolation of animals newly purchased⁴ and the issue and production of licences⁵ respecting movement and removal of animals and things⁶. They may also by order prohibit absolutely or conditionally the use, for the carrying of animals, of any vessel, vehicle, aircraft or pen or other place in respect of the use of which a penalty has previously been recovered, and prohibit or regulate the holding of markets, fairs, exhibitions, and sales⁷ of animals⁸.

A person is guilty of an offence against the Animal Health Act 1981 if, where an order of the Secretary of State or the Welsh Ministers absolutely or conditionally prohibits the use of a vessel, aircraft, vehicle or pen, or other place, for the carrying of animals or for any connected purpose, he, without lawful authority or excuse, proof of which lies on him, does anything so prohibited⁹.

Particular (and separate) provision is made requiring records to be kept by any person who moves deer¹⁰.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 See the Pleuro-Pneumonia Order of 1928, SR & O 1928/205 (amended by SR & O 1938/195; SI 1977/944); the Cattle Plague Order of 1928, SR & O 1928/206 (amended by SR & O 1938/194; SI 1977/944); the Swine Vesicular Disease Order 1972, SI 1972/1980 (amended by SI 1973/101; SI 1977/944; and SI 1993/3119); the Warble Fly (England and Wales) Order 1982, SI 1982/234 (amended by SI 1985/328; SI 1987/1601; SI 1989/244; SI 1994/3142; and SI 2006/2407); the Aujeszky's Disease Order 1983, SI 1983/344 (amended by SI 1994/3141; SI 1995/11; and SI 1995/2922); the Warble Fly (England and Wales) (Infected Areas) Order 1985, SI 1985/1542 (amended by SI 1994/3142); the Warble Fly (Ascertainment of Infestation) (England and Wales) Order 1985, SI 1985/1766; the Infectious Diseases of Horses Order 1987, SI 1987/790 (amended by SI 1992/3159; and SI 1995/2922); the Zoonoses Order 1988, SI 1988/2264 (amended by SI 1997/2964); the Zoonoses Order 1989, SI 1989/285; the Tuberculosis (Deer) Order 1989, SI 1989/878 (amended by SI 1993/2010; and SI 1995/2922); the Tuberculosis (Deer) Notice of Intended Slaughter and Compensation Order 1989, SI 1989/1316; the Welfare of Horses at Markets (and Other Places of Sale) Order 1990, SI 1990/2627; the Welfare of Animals at Markets Order 1990, SI 1990/2628 (amended by SI 1993/3085; SI 1995/12; SI 2006/2166; and SI 2006/2237); the Anthrax Order 1991, SI 1991/2814 (amended by SI 1995/2922; and SI 1996/1855); the Poultry Breeding Flocks and Hatcheries Order 1993, SI 1993/1989; the Bovine Animals (Records, Identification and Movement) Order 1995, SI 1995/12 (amended by SI 1995/2922; and SI 1998/871); the Equine Viral Arteritis Order 1995, SI 1995/1755 (amended by SI 1995/2922); the Specified Diseases (Notification) Order 1996, SI 1996/2628 (amended by SI 1998/1645); the Sheep Scab Order 1997, SI 1997/968; the Specified Animal Pathogens Order 2008, SI 2008/944; the Movement of Animals (Restrictions) (England) Order 2002, SI 2002/3229 (amended by SI 2007/2809); the Movement of Animals (Restrictions) (Wales) Order 2003, SI 2003/399; the Diseases of Poultry (England) Order 2003, SI 2003/1078 (amended by SI 2006/1197, so as not to apply to avian influenza); the Diseases of Poultry (Wales) Order 2003, SI 2003/1079 (amended by SI 2006/1762, so as not to apply to avian influenza); the Classical Swine Fever (England) Order 2003, SI 2003/2329; the Disease Control (England) Order 2003, SI 2003/1729 (amended by SI 2006/182; SI 2007/2623; SI 2008/1066); the Disease Control (Wales) Order 2003, SI 2003/1966 (amended by SI 2006/179; SI 2006/1036; SI 2007/2475; SI 2007/2626; SI 2008/1314); the Classical Swine Fever (Wales) Order 2003, SI 2003/2456; the African Swine Fever (England) Order 2003, SI 2003/2913; the African Swine Fever (Wales) Order 2003, SI 2003/3273; the Animal Gatherings (England) Order 2004, SI 2004/1202; the Animal Gatherings (Wales) Order 2004, SI 2004/1803; the Horse Passports (England) Regulations 2004, SI 2004/1397; the Horse Passports (Wales) Regulations 2005, SI 2005/231; the Pigs (Records, Identification and Movement) Order 2007, SI 2007/642 (England); Pigs (Records, Identification and Movement) (Wales) Order 2004, SI 2004/996; the Animal By-Products Regulations 2005, SI 2005/2347 (England); the Animal By-Products (Wales) Regulations 2003, SI 2003/2756; the Sheep and Goats (Records, Identification and Movement) (England) Order 2005, SI 2005/3100; the Sheep and Goats (Records, Identification and Movement)

(Wales) Order 2008, SI 2008/130; the Foot-and-Mouth Disease (England) Order 2006, SI 2006/182; the Foot-and-Mouth Disease (Wales) Order 2006, SI 2006/179; the Tuberculosis (England) Order 2007, SI 2007/740; the Tuberculosis (Wales) Order 2006, SI 2006/1053; the Bluetongue (No 2) Order 2007, SI 2007/3304 (amended by SI 2008/962); and the Bluetongue (No 2) (Wales) Order 2007, SI 2007/3309 (amended by SI 2008/1090). See also the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260; and the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047.

See also the Avian Influenza and Influenza of Avian Origin in Mammals (England) (No 2) Order 2006, SI 2006/2702; the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006, SI 2006/2927; the Avian Influenza (H5N1 in Poultry) (England) Order 2006 (SI 2006/3247 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006, SI 2006/3309 (amended by SI 2007/3375); the Avian Influenza (H5N1 in Wild Birds) (England) Order 2006, SI 2006/3249 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Wild Birds) (Wales) Order 2006, SI 2006/3310 (amended by SI 2007/3375).

3 As to the meanings of 'carcase', 'fodder' and 'litter' see PARA 1072 note 11.

4 Animal Health Act 1981 s 8(1)(a), (b).

5 If a licence is produced the justices cannot inquire into the sufficiency of the evidence on which it was granted: *Stanhope v Thorsby* (1866) LR 1 CP 423.

6 Animal Health Act 1981 s 8(1)(c). A railway undertaking may be convicted of moving animals, or causing, directing or permitting them to be moved, in contravention of an order relating to the movement of animals, even though it is not a party to the consignment contract, if it conveys them into a prohibited district (*Midland Rly Co v Freeman* (1884) 12 QBD 629), but it is entitled to refuse to carry them at all where the requirements of the order are not strictly complied with (*Williams v Great Western Rly Co* (1885) 52 LT 250). As to the nature of the requirement to make records of movement see *Clement v Durham Magistrates' Court* [2003] All ER (D) 387 (Mar) (record of intention to move does not satisfy requirement to make record of movement). As to the disposal of carcasses in pursuance of the Animals By-Products Order 1999, SI 1999/646, see *Pudney v Nicholson* [2003] All ER (D) 446 (Mar). See also *R (on the application of Banks) v Secretary of State for the Environment, Food and Rural Affairs* [2004] EWHC 416 (Admin), (2004) Times, 19 April (decision to maintain cattle movement restriction notice procedurally unfair where Secretary of State for the Environment, Food and Rural Affairs did not disclose information on which she relied).

7 Hawking pigs is not holding a sale: *McLean v Monk* (1898) 77 LT 663.

8 Animal Health Act 1981 s 8(1)(d), (e).

9 Animal Health Act 1981 s 8(2). As to the penalties for offences against the Act see PARA 1101.

10 See the Movement of Animals (Records) Order 1960, SI 1960/105 (amended by SI 1961/1493; SI 1977/944; SI 1989/879; SI 1989/2053; and SI 1990/1868; revoked in relation to pigs by SI 1995/11 (revoked); revoked in relation to bovine animals by SI 1995/12; disappplied from sheep and goats by SI 1996/28 (revoked)).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1076 Movement of animals generally

NOTE 2--SI 1972/1980 (as amended) replaced by Swine Vesicular Disease Regulations 2009, SI 2009/1299 (England); Swine Vesicular Disease (Wales) Regulations 2009, SI 2009/1372: see PARA 1042. SI 1983/344, SI 1987/790, SI 1991/2814, SI 1996/2628, SI 2005/2347, SI 2007/740 amended: see PARA 1041. SI 1989/878, SI 2003/2329

amended: see PARA 1049. SI 1995/1755, SI 2003/2913, SI 2008/944 amended: see PARA 1042. SI 2003/399 amended: see PARA 1041. SI 2003/1078 further amended: see PARA 1052. SI 2004/996 replaced: Pigs (Records, Identification and Movement) Order 2008, SI 2008/1742. SI 2004/1397 replaced: Horse Passports Regulations 2009, SI 2009/1611. SI 2005/231 replaced: Equine Identification (Wales) Regulations 2009, SI 2009/2470. SI 2006/182, SI 2006/2702 amended: see PARA 868. SI 2005/3100 replaced: Sheep and Goats (Records, Identification and Movement) (England) Order 2009, SI 2009/3219. SI 2008/130 replaced: Sheep and Goats (Records, Identification and Movement) (Wales) Order 2009, SI 2009/3364. SI 2006/1053 replaced: Tuberculosis (Wales) Order 2010, SI 2010/1379.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(ix) Regulation of Movement/1077. Movement of diseased or suspected animals.

1077. Movement of diseased or suspected animals.

As regards all diseases¹ the Secretary of State or the Welsh Ministers² may make orders³ prohibiting or regulating the exposure of diseased or suspected animals⁴ in markets, fairs, sale-yards or other public or private places where animals are commonly exposed for sale, and the placing thereof in lairs or other places adjacent to or connected with markets or fairs, or where animals are commonly placed before exposure for sale⁵; or the sending or carrying of such animals, or of dung⁶ or other things likely to spread disease, or the causing the same to be sent or carried, on railways, canals, rivers or inland navigation, or in coasting vessels, or in an aircraft, or otherwise⁷; or the carrying, leading or driving of such animals, or the causing them to be carried, led or driven, on highways or thoroughfares or elsewhere⁸; or the placing or keeping them on commons or uninclosed lands, or in fields or other places insufficiently fenced, or on the sides of highways⁹.

1 As to the meaning of 'disease' see PARA 1042.

2 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

3 See the Pleuro-Pneumonia Order of 1928, SR & O 1928/205 (amended by SR & O 1938/195; and SI 1977/944); the Cattle Plague Order of 1928, SR & O 1928/206 (amended by SR & O 1938/194; and SI 1977/944); the Warble Fly (England and Wales) Order 1982, SI 1982/234 (amended by SI 1985/328; SI 1987/1601; SI 1989/244; SI 1994/3142; and SI 2006/2407); the Aujeszky's Disease Order 1983, SI 1983/344 (amended by SI 1994/3141; SI 1995/11; and SI 1995/2922); the Warble Fly (England and Wales) (Infected Areas) Order 1985, SI 1985/1542 (amended by SI 1994/3142); the Tuberculosis (Deer) Order 1989, SI 1989/878 (amended by SI 1993/2010; and SI 1995/2922); the Anthrax Order 1991, SI 1991/2814 (amended by SI 1995/2922; and SI 1996/1855); the Bovine Animals (Records, Identification and Movement) Order 1995, SI 1995/12 (amended by SI 1995/2922; and SI 1998/871); the Sheep Scab Order 1997, SI 1997/968; the Diseases of Poultry (England) Order 2003, SI 2003/1078 (amended by SI 2006/1197, so as not to apply to avian influenza); the Diseases of Poultry (Wales) Order 2003, SI 2003/1079 (amended by SI 2006/1762, so as not to apply to avian influenza); the Classical Swine Fever (England) Order 2003, SI 2003/2329; the Classical Swine Fever (Wales) Order 2003, SI 2003/2456; the African Swine Fever (England) Order 2003, SI 2003/2913; the African Swine Fever (Wales) Order 2003, SI 2003/3273; the Pigs (Records, Identification and Movement) Order 2007, SI 2007/642 (England); the Pigs (Records, Identification and Movement) (Wales) Order 2004, SI 2004/996; the Foot-and-Mouth Disease (England) Order 2006, SI 2006/182; the Foot-and-Mouth Disease (Wales) Order 2006, SI 2006/179; the Tuberculosis (England) Order 2007, SI 2007/740; the Tuberculosis (Wales) Order 2006, SI 2006/1053; the Bluetongue (No 2) Order 2007, SI 2007/3304 (amended by SI 2008/962); and the Bluetongue (No 2) (Wales) Order 2007, SI 2007/3309 (amended by SI 2008/1090).

See also the Avian Influenza and Influenza of Avian Origin in Mammals (England) Order (No 2) Order 2006, SI 2006/2702; the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006, SI 2006/2927; the Avian Influenza (H5N1 in Poultry) (England) Order 2006, SI 2006/3247 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006, SI 2006/3309 (amended by SI 2007/3375); the Avian Influenza (H5N1 in Wild Birds) (England) Order 2006, SI 2006/3249 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Wild Birds) (Wales) Order 2006, SI 2006/3310 (amended by SI 2007/3375).

4 As to the meaning of 'animal' see PARA 1041.

5 Animal Health Act 1981 s 25(a).

6 Cf *Youngman v Morris* (1866) 15 LT 276.

7 Animal Health Act 1981 s 25(b). The reference to aircraft applies where an aircraft is engaged in a flight or a part of a flight beginning and ending in Great Britain: s 25(b). As to the meaning of 'Great Britain' see PARA 830 note 21.

8 Animal Health Act 1981 s 25(c).

9 Animal Health Act 1981 s 25(d).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1077 Movement of diseased or suspected animals

NOTE 3--SI 1983/344, SI 1991/2814, SI 2007/740 amended: see PARA 1041. SI 1989/878, SI 2003/2329 amended: see PARA 1049. SI 2003/1078 further amended: see PARA 1052. SI 2003/2913 amended: see PARA 1042. SI 2004/996 replaced: Pigs (Records, Identification and Movement) Order 2008, SI 2008/1742. SI 2006/182, SI 2006/2702 amended: see PARA 868. SI 2006/1053 replaced: Tuberculosis (Wales) Order 2010, SI 2010/1379.

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1078. Issue of horse passports.

The following provisions apply in relation to England¹.

Passport-issuing organisations² are authorised to issue passports³ for horses. On application, provided all its requirements are complied with, a passport-issuing organisation must issue a passport duly completed in the format specified⁴. A passport-issuing organisation may cancel a passport issued by it if it is satisfied on reasonable grounds that the relevant provisions have not been or are not being complied with, or if the passport has not been properly completed or has been falsified in any way⁵. When a passport is returned because a horse has died, the passport-issuing organisation must mark the passport accordingly but may then return it to the owner if permitted by its rules⁶. A passport-issuing organisation must maintain a record of specified information⁷, and must keep such a record until three years after the death of the horse⁸. It must also supply to the Secretary of State information from its records in such form and at such intervals as the Secretary of State may require in notice by writing⁹.

The owner of a horse that was born on or before 30 November 2003 who does not already have a passport for that horse must apply¹⁰ for a passport for it before 1 July 2004¹¹. The owner of a horse that was born after 30 November 2003 must obtain a passport for it on or before 31 December in the year of its birth, or by six months after its birth, whichever is the later¹². The owner, or, in the case of an owner living outside England, the keeper¹³, of a horse brought into England without a passport, or with a document that would be a passport but for the fact that it does not contain specified pages¹⁴, must apply for a passport or those pages within 30 days¹⁵ of the horse being brought into England¹⁶. Where a passport has been lost or damaged the owner of a horse must, within 30 days of the loss or damage being discovered, apply for a replacement passport for that horse (1) where the passport-issuing organisation of issue is known to him, to that organisation; or (2) where the passport-issuing organisation of issue is not known, to any passport-issuing organisation¹⁷.

An owner may at any time sign the declaration¹⁸ concerning whether or not the animal is intended for slaughter for human consumption, or may choose not to sign it¹⁹. An owner must sign the declaration and ensure that it is countersigned by a passport-issuing organisation or the Secretary of State before the horse is sent outside the United Kingdom²⁰.

No person may (a) destroy or deface a passport²¹; (b) alter entries or details in any of the specified Sections of a passport²²; or (c) be in possession of a document which falsely purports to be a passport²³. If a passport should have been issued for a horse, after 28 February 2005 no person may use the horse for the purposes of competition or breeding, move it out of the United Kingdom, or move it on to the premises of a new keeper unless it is accompanied by its passport²⁴. After 28 February 2005, no person may sell a horse without a passport²⁵. A person in possession of a passport must produce it on reasonable demand to the passport-issuing organisation that issued it, and must surrender it on reasonable demand to that organisation²⁶. An owner of a horse that dies or is slaughtered must send the passport to the passport-issuing authority within 30 days of the death²⁷. After 28 February 2005 no person may slaughter a horse for human consumption or consign it for such slaughter unless it is accompanied by its passport and the declaration in Section IX of the passport does not show that the animal is not intended for slaughter for human consumption²⁸.

1 See the Horse Passports (England) Regulations 2004, SI 2004/1397, reg 1. Except where otherwise provided, the Horse Passports (Wales) Regulations 2005, SI 2005/231, make corresponding provision in relation to Wales.

2 'Passport-issuing organisations' means (1) organisations authorised in writing by the Secretary of State under the Horse Passports (England) Regulations 2004, SI 2004/1397, to issue passports; (2) organisations that maintain or establish stud-books for registered horses and are recognised by the Secretary of State under the Horses (Zootechnical Standards) Regulations 1992, SI 1992/3045, reg 3 (replaced: see the Horses (Zootechnical Standards) (England) Regulations 2006, SI 2006/1757, and the Horses (Zootechnical Standards) (Wales) (Regulations) 2006, SI 2006/2607); (3) organisations recognised in another part of the United Kingdom or another member state under legislation that implements either EEC Commission Decision 92/353 (OJ L192, 11.7.1992, p 63) or EC Commission Decision 2000/68 (OJ L23, 28.1.2000, p 72); and (4) international associations or organisations that manage or regulate horses for competition or racing and are registered with the Secretary of State to issue passports: Horse Passports (England) Regulations 2004, SI 2004/1397, reg 3(1) (a)-(d). The Secretary of State may by notice in writing withdraw authorisation under head (1) or registration under head (4) if he is satisfied on reasonable grounds that an association or organisation is not complying with the provisions of the Horse Passports (England) Regulations 2004, SI 2004/1397: reg 3(2). 'Horse' means an animal of the equine or asinine species or crossbreeds of those species, but does not include zebras: reg 2.

Powers exercised by the Secretary of State in England are exercised in Wales by the Welsh Ministers: see the Horse Passports (Wales) Regulations 2005, SI 2005/231; and the Government of Wales Act 2006 s 162(1), Sch 11 para 30.

3 'Passport' means (1) an identification document for a horse issued by a passport-issuing organisation containing all the information required by the Horse Passports (England) Regulations 2004, SI 2004/1397, reg 8(2), (3); or (2) in the case of such an identification document issued before the coming into force of these provisions but which does not contain the pages in Section IX of the passport (the 'Section IX pages'), that document with the Section IX pages attached in accordance with reg 9, provided that the Section IX pages have been applied for before 1 July 2004: regs 2, 9(1). No person may issue a document which falsely purports to be a passport: reg 3(3).

In the case of a horse either registered or eligible for entry in a stud-book of a recognised organisation in accordance with EEC Council Directive 90/426 (OJ L224, 18.8.1990, p 42), the passport must contain all the Sections specified in the Horse Passports (England) Regulations 2004, SI 2004/1397, Sch 1: reg 8(2). In any other case the passport must contain at least Sections I to IV and IX, but may contain more Sections or all Sections: reg 8(3). When issuing a passport, the passport-issuing organisation must identify the horse with a number or alphanumeric code not previously used by that organisation in Section II of the passport: reg 10. Any Section IX pages must contain the same number or alphanumeric code as in Section II of the original identification document: reg 9(3).

Sections I to VIII of passports issued in England must be in English and French and Section IX must be in English: reg 11(1), (2). A passport or any part of it may also be in an additional language: reg 11(3).

4 See the Horse Passports (England) Regulations 2004, SI 2004/1397, Sch 1: reg 8(1).

5 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 4(2). For the purposes of the passport, the passport-issuing organisation is the 'competent authority': reg 4(1).

6 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 4(3).

7 See information contained in applications for passports and Section IX pages, any change of ownership of a horse, and the death of a horse: Horse Passports (England) Regulations 2004, SI 2004/1397, reg 5(1)(a)-(c).

8 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 5(2).

9 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 5(3).

10 An application for a passport must be (1) made by the owner of the horse; (2) made in writing to a passport-issuing organisation; and (3) in the format specified by that organisation: Horse Passports (England) Regulations 2004, SI 2004/1397, reg 6(1). No person is allowed to apply for more than one passport for a horse or apply for a second passport, other than a replacement passport, for a horse: reg 6(2). Regulation 6 also applies to an application for Section IX pages: reg 9(2).

11 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 7(1). Different time limits apply in relation to Wales: see the Horse Passports (Wales) Regulations 2005, SI 2005/231, reg 7(1). Special arrangements have effect for the New Forest and Dartmoor: see the Horse Passports (England) Regulations 2004, SI 2004/1397, reg 13, Sch 2.

- 12 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 7(2). Different time limits apply in relation to Wales: see the Horse Passports (Wales) Regulations 2005, SI 2005/231, reg 7(2).
- 13 'Keeper' means a person appointed by the owner to have day to day charge of the horse: Horse Passports (England) Regulations 2004, SI 2004/1397, reg 2.
- 14 le Section IX pages: Horse Passports (England) Regulations 2004, SI 2004/1397, reg 12(1).
- 15 The Horse Passports (England) Regulations 2004, SI 2004/1397, reg 12(1) (see text to note 14) does not apply in relation to a horse that remains in England for less than 30 days: reg 12(3).
- 16 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 12(1). A passport or Section IX pages issued following the making of such an application must state that the horse is not intended for slaughter or human consumption: reg 12(2).
- 17 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 16(1). The passport-issuing organisation applied to must issue a replacement passport marked with the word 'Duplicate': reg 16(2). If all the original information in Section IX is legible, the replacement passport must repeat that information: reg 16(3). If any information in Section IX is illegible, the passport-issuing organisation must indicate in the replacement passport that the horse is not intended for slaughter for human consumption by completing Section IX Part II: reg 16(4).
- 18 le the declaration in Section IX.
- 19 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 14(1). However, an owner must sign the declaration (1) before any veterinary medicinal product containing a substance specified in EEC Council Regulation 2377/90 (OJ L224, 18.8.1990, p 1) Annex IV is administered to a horse, in which case the declaration must indicate that the horse is not intended for slaughter for human consumption, unless it has already been so signed; or (2) before the horse is consigned for slaughter for human consumption, in which case the declaration must indicate that the horse is intended for slaughter for human consumption: Horse Passports (England) Regulations 2004, SI 2004/1397, reg 14(2), (3). As to requirements on persons administering veterinary medicinal products see reg 18. For provision in relation to Wales relating to declarations concerning slaughter for human consumption, see the Horse Passports (Wales) Regulations 2005, SI 2005/231, reg 13.
- 20 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 14(4).
- 21 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 15(1)(a).
- 22 See the Horse Passports (England) Regulations 2004, SI 2004/1397, reg 15(1)(b)-(f).
- 23 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 15(2). In proceedings against a person for an offence of failing to comply with reg 15(2) it is a defence for him to prove that he was not aware that the document was not a passport: reg 15(3). As to offences see PARA 1079.
- 24 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 17.
- 25 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 19(1). On the sale of a horse, the seller must give the passport to the buyer or, at auction sales, the auctioneer must give the passport to the buyer, and the new owner or his representative must, within 30 days of purchase, send to the passport-issuing organisation that issued the passport the name and address of the new owner and the name and identification number or alphanumeric code of the horse as entered in Section II of the passport, and must complete Section I of the passport in accordance with the rules of the passport-issuing organisation: reg 19(2), (3). 'Sell' includes any transfer of ownership: reg 2.
- 26 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 19(4).
- 27 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 19(5).
- 28 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 20.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1078-1079 Issue of horse passports, Horse passports: offences, penalties and enforcement

SI 2004/1397 replaced: Horse Passports Regulations 2009, SI 2009/1611. SI 2005/231 replaced: Equine Identification (Wales) Regulations 2009, SI 2009/2470.

1078 Issue of horse passports

NOTE 19--Regulation 2377/90 replaced: European Parliament and EC Council Regulation 470/2009 (OJ L152, 16.6.2009, p 11).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(ix) Regulation of Movement/1079. Horse passports: offences, penalties and enforcement.

1079. Horse passports: offences, penalties and enforcement.

The following provisions apply in relation to England¹.

It is an offence for any person or organisation to fail to comply with specified regulations relating to the issue of horse² passports³. Where a body corporate is guilty of an offence under these provisions, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director⁴, manager, secretary or other similar person of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly⁵.

An inspector⁶, on producing a duly authenticated document showing his authority, has a right at all reasonable hours to enter any premises⁷, excluding any premises not containing any horse and used only as a dwelling, for the purpose of enforcing these provisions⁸. Such an inspector may (1) require the production of a passport⁹; (2) carry out any inquiries¹⁰; (3) have access to, and inspect and copy any records, in whatever form they are held¹¹; (4) remove such records to enable them to be copied¹²; (5) have access to, inspect and check the operation of any computer and any associated apparatus or material which is or has been in use in connection with the records, and for this purpose may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as he may reasonably require and, where a record is kept by means of a computer, may require the records to be produced in a form in which they may be taken away¹³; (6) mark any animal or other thing for identification purposes¹⁴; and (7) take with him such other persons as he considers necessary, and any representative of the European Commission properly interested in the administration of these provisions¹⁵. No person may deface, obliterate or remove any mark applied¹⁶ except under the written authority of an inspector¹⁷. If an inspector enters any unoccupied premises he must leave them as effectively secured against unauthorised entry as he found them¹⁸.

No person may (a) intentionally obstruct any person acting in the execution of these provisions¹⁹; (b) without reasonable cause, fail to give to any person acting in the execution of these provisions any assistance or information which that person may reasonably require of him for the performance of his functions²⁰; (c) furnish to any person acting in the execution of these provisions any information which he knows to be false or misleading²¹; or (d) fail to produce a record when required to do so to any person acting in the execution of these provisions²².

A person guilty of an offence of failing to comply with certain of these provisions²³ is liable on summary conviction, to a fine not exceeding the statutory maximum²⁴ or to imprisonment for a term not exceeding three months or both, or on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both²⁵. Provision is made for enforcement by the local authority²⁶.

1 See the Horse Passports (England) Regulations 2004, SI 2004/1397, reg 1. Except where otherwise provided, the Horse Passports (Wales) Regulations 2005, SI 2005/231, make corresponding provision in relation to Wales.

2 As to the meaning of 'horse' see PARA 1078 note 2.

3 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 23(1). As to the meaning of 'passport' see PARA 1078 note 3.

4 'Director', in relation to a body corporate whose affairs are managed by its members, means a member of a body corporate: Horse Passports (England) Regulations 2004, SI 2004/1397, reg 23(3).

5 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 23(2). Where an organisation that is not a body corporate is guilty of an offence under these provisions, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any officer of that organisation, he as well as the organisation is guilty of the offence and is liable to be proceeded against and punished accordingly: reg 23(4). As to penalties see text and note 25.

6 'Inspector' means a person appointed as such by a local authority or the Secretary of State for the enforcement of these provisions: Horse Passports (England) Regulations 2004, SI 2004/1397, reg 21(5). 'Local authority' means (1) in the City of London, the Common Council; (2) in any part of England where there is a unitary authority for that local government area within the meaning of the Local Government Changes for England Regulations 1994, SI 1994/867, that authority; (3) where there is not a unitary authority, (a) in a metropolitan district, the council of that district; (b) in a non-metropolitan county, the council of that county; or (c) in each London borough, the council of that borough: Horse Passports (England) Regulations 2004, SI 2004/1397, reg 2. In relation to Wales, 'local authority' means the council of a county or county borough: Horse Passports (Wales) Regulations 2005, SI 2005/231, reg 2.

7 'Premises' includes any vehicle or container: Horse Passports (England) Regulations 2004, SI 2004/1397, reg 21(1).

8 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 21(1).

9 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 21(2)(a).

10 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 21(2)(b).

11 le records kept under the Horse Passports (England) Regulations 2004, SI 2004/1397: reg 21(2)(c).

12 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 21(2)(d).

13 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 21(2)(e).

14 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 21(2)(f).

15 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 21(2)(g).

16 le under the Horse Passports (England) Regulations 2004, SI 2004/1397, reg 21(2).

17 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 21(3).

18 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 21(4).

19 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 22(a).

20 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 22(b).

21 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 22(c).

22 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 22(d).

23 le the Horse Passports (England) Regulations 2004, SI 2004/1397, reg 3(3), 18(2)(c), (d), (4) or 20: reg 24(1).

24 As to the statutory maximum see PARA 877 note 6.

25 Horse Passports (England) Regulations 2004, SI 2004/1397, reg 24(1). A person guilty of any other offence under these provisions is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 24(2). As to the standard scale see PARA 738 note 1.

26 See the Horse Passports (England) Regulations 2004, SI 2004/1397, reg 25(1). The Secretary of State may direct, in relation to cases of a particular description or any particular case, that an enforcement duty imposed on a local authority is to be discharged by the Secretary of State and not by the local authority: reg 25(2).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1078-1079 Issue of horse passports, Horse passports: offences, penalties and enforcement

SI 2004/1397 replaced: Horse Passports Regulations 2009, SI 2009/1611. SI 2005/231 replaced: Equine Identification (Wales) Regulations 2009, SI 2009/2470.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(ix) Regulation of Movement/1080. Cattle databases and identification.

1080. Cattle databases and identification.

The identification of cattle, and the notification of birth, death and movement of cattle, are the subject of detailed European legislation¹, which requires member states to operate systems of tagging bovine animals as means of identification, and to notify such birth, death and movement to a central database. These provisions have been implemented by subordinate legislation in the United Kingdom, relating to (1) the notification of holdings and the issue of herdmarks; (2) the identification, tagging and registration of cattle and the issue of cattle passports; (3) the notification of movements and death of cattle; and (4) the keeping of records².

Under those regulations, an occupier of a holding³ who begins to keep cattle⁴ on that holding, and any person who takes over the occupation of a holding where cattle are kept, must notify the Secretary of State or the Welsh Ministers⁵ within one month of his name and address and the address of the holding⁶. On receipt of such notification the Secretary of State or the Welsh Ministers must issue a herdmark for each holding⁷.

The Secretary of State is the competent authority in England and the Welsh Ministers are the competent authority in Wales for the purposes of approving ear tags for cattle⁸. All cattle must be registered⁹, and if the Secretary of State or the Welsh Ministers receive a fully completed and accurate application for the registration of an animal, he or they must issue a cattle passport¹⁰ for that animal¹¹. Movements or death of cattle must be notified¹², and specific provision is made as to the keeping of records¹³. Inspectors are given powers of entry and search, and power to carry out checks and examinations¹⁴, and an officer of the Secretary of State or of the Welsh Ministers may restrict the movement of cattle to or from a holding if he is satisfied that this is necessary for the proper enforcement of the European legislation or the regulations¹⁵. Unmarked animals may be slaughtered¹⁶.

A person who (a) obstructs any person acting in the execution of the regulations; (b) without reasonable cause, fails to give to any person acting in the execution of the regulations any assistance or information that that person may reasonably require of him for the purposes of his functions; (c) furnishes to any person acting in the execution of the regulations any information that he knows to be false or misleading; or (d) fails to produce a passport, document or record when required to do so to any person acting under the regulations, is guilty of an offence¹⁷.

The regulations are enforced by the local authority; but the Secretary of State or the Welsh Ministers may direct in any particular case or class of case that he or they will enforce them instead¹⁸.

1 le EC Parliament and Council Regulation 1760/2000 (OJ L204, 11.8.2000, p 1) establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products (and repealing EC Council Regulation 820/97); EC Commission Regulation 494/98 (OJ L60, 28.2.1998, p 78) laying down detailed rules for the implementation of EC Council Regulation 820/97 as regards the application of minimum administrative sanctions in the framework of the system for the identification and registration of bovine animals; EC Commission Regulation 911/2004 (OJ L163, 30.4.2004, p 65) (implementing European Parliament and Council Regulation 1760/2000 (OJ L204, 11.8.2000, p 1) as regards ear tags, passports and holding registers); and EC Commission Regulation 644/2005 (OJ L107, 28.4.2005, p 18) (authorising a special identification system for bovine animals kept for cultural and historical purposes on approved premises as provided for in European Parliament and Council Regulation 1760/2000 (OJ L204, 11.8.2000, p 1)).

2 See the Cattle Identification Regulations 2007, SI 2007/529 (amended by SI 2007/1046); and the Cattle Identification (Wales) Regulations 2007, SI 2007/842 (amended by SI 2007/3004).

3 'Holding' means any establishment, construction or, in the case of an open-air farm, any place in which cattle are held, kept or handled: Cattle Identification Regulations 2007, SI 2007/529, reg 2(1); Cattle Identification (Wales) Regulations 2007, SI 2007/842, reg 2(1).

4 For these purposes, 'cattle' means bovine animals, including bison and buffalo: Cattle Identification Regulations 2007, SI 2007/529, reg 2(1); Cattle Identification (Wales) Regulations 2007, SI 2007/842, reg 2(1).

5 As to the Secretary of State see PARA 705. As to the Welsh Ministers see PARA 706.

6 Cattle Identification Regulations 2007, SI 2007/529, reg 3(1). The occupier must notify the Secretary of State of any change to the information within one month: reg 3(3). Any person who fails to comply with reg 3(1) or (3) is guilty of an offence: reg 3(4) (added by SI 2007/1046). A person guilty of an offence under the Cattle Identification Regulations 2007, SI 2007/529, is liable, on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment not exceeding three months or to both and, on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both: reg 15. As to the statutory maximum see PARA 877 note 6. For the equivalent provisions in relation to Wales see the Cattle Identification (Wales) Regulations 2007, SI 2007/842, regs 3(1), (3), (4), 15 (reg 3(4) added by SI 2007/3004).

7 Cattle Identification Regulations 2007, SI 2007/529, reg 3(2); Cattle Identification (Wales) Regulations 2007, SI 2007/842, reg 3(2).

8 See the Cattle Identification Regulations 2007, SI 2007/529, reg 4, Sch 1 para 1(1). For specific provision as to ear tags see Sch 1. For the equivalent provisions in relation to Wales see the Cattle Identification (Wales) Regulations 2007, SI 2007/842, reg 4, Sch 1.

9 As to registration see the Cattle Identification Regulations 2007, SI 2007/529, reg 5, Sch 2. It is an offence to fail to register an animal in accordance with Sch 2: Sch 2 para 1. As to the penalties see note 6. For the equivalent provisions in relation to Wales see the Cattle Identification (Wales) Regulations 2007, SI 2007/842, reg 5, Sch 2.

10 'Cattle passport' means (1) a cattle passport issued in England, Wales or Scotland under EC Parliament and Council Regulation 1760/2000 (OJ L204, 11.8.2000, p 1) art 6(1); (2) a cattle passport issued under the Cattle Passports Order 1996, SI 1996/1686 (revoked); or (3) a movement document issued under the Cattle (Identification of Older Animals) (England) Regulations 2000, SI 2000/2976 (revoked), or the equivalent measure in Scotland, Wales or Northern Ireland: Cattle Identification Regulations 2007, SI 2007/529, reg 2(1). A similar definition is given by the Cattle Identification (Wales) Regulations 2007, SI 2007/842, reg 2(1).

11 Cattle Identification Regulations 2007, SI 2007/529, reg 6, Sch 3 para 1(1), (2). As to cattle passports see further Sch 3. For the equivalent provisions in relation to Wales see the Cattle Identification (Wales) Regulations 2007, SI 2007/842, reg 6, Sch 3.

12 See the Cattle Identification Regulations 2007, SI 2007/529, reg 7, Sch 4; and the Cattle Identification (Wales) Regulations 2007, SI 2007/842, reg 7, Sch 4.

13 See the Cattle Identification Regulations 2007, SI 2007/529, reg 8, Sch 5; and the Cattle Identification (Wales) Regulations 2007, SI 2007/842, reg 8, Sch 5.

14 See the Cattle Identification Regulations 2007, SI 2007/529, reg 10; and the Cattle Identification (Wales) Regulations 2007, SI 2007/842, reg 10.

15 See the Cattle Identification Regulations 2007, SI 2007/529, reg 11; and the Cattle Identification (Wales) Regulations 2007, SI 2007/842, reg 11.

16 See the Cattle Identification Regulations 2007, SI 2007/529, reg 12; and the Cattle Identification (Wales) Regulations 2007, SI 2007/842, reg 12.

17 Cattle Identification Regulations 2007, SI 2007/529, reg 13. As to the penalties see note 6. As to offences by bodies corporate see reg 14. For the equivalent provisions in relation to Wales see the Cattle Identification (Wales) Regulations 2007, SI 2007/842, regs 13, 14.

18 Cattle Identification Regulations 2007, SI 2007/529, reg 16; Cattle Identification (Wales) Regulations 2007, SI 2007/842, reg 16.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(x) Import and Export/A. IMPORT/1081. Import of animals: general powers.

(x) Import and Export

A. IMPORT

1081. Import of animals: general powers.

The Secretary of State or the Welsh Ministers¹ may make by order² such provision as they think fit for preventing the introduction or spreading of disease³ into or within Great Britain through the importation⁴ of (1) animals⁵ and carcasses; (2) carcasses of poultry and eggs; and (3) any other things (animate or inanimate) by or by means of which it appears to them that any disease might be carried or transmitted⁶.

In particular, such orders may prohibit or regulate the import of any of the things specified above⁷. They may provide as to persons, animals and other things which have been or may have been in contact with imports⁸. They may provide as to conditions or licences (which may be specific or general and conditional or unconditional) for importation; the prohibition of importation save at designated ports or airports; the landing, quarantine, seizure, detention, treatment, marking, testing, use and slaughter of animals, and the destruction of other things; the movement of persons, animals or other things; cleansing, disinfection and inspection; costs; and compensation⁹. Orders may make different provision for different cases¹⁰. An order that is expressed to be for the purpose of preventing the introduction of rabies into Great Britain may include provision for the destruction of animals in respect of which the order, or a licence granted under it, is contravened¹¹. Imported animals must be landed in accordance with the requirements of the Commissioners for Revenue and Customs¹².

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 See the Importation of Animals Order 1977, SI 1977/944 (amended by SI 1990/2371; SI 1992/1361; SI 1992/3159; SI 1995/2922; SI 1996/1760; SI 2000/1618; SI 2000/1673; SI 2001/2662); PARA 1085.

See also the Hares (Control of Importation) Order 1965, SI 1965/2040 (amended by SI 1990/2371); the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211 (amended by SI 1977/361; SI 1984/1182; SI 1986/2062; SI 1990/2371; SI 1993/1813; SI 1994/1405; SI 1994/1716; SI 1995/2922; SI 1999/3443; SI 2000/1298; SI 2000/1641; SI 2002/882 (Wales); SI 2002/2135; and SI 2004/2364 (England)); the Importation of Birds, Poultry and Hatching Eggs Order 1979, SI 1979/1702 (amended by SI 1990/2371; SI 1996/3124; and SI 2000/1673); the Importation of Hay and Straw Order 1979, SI 1979/1703 (amended by SI 1990/2371; and SI 1996/3124); the Importation of Embryos, Ova and Semen Order 1980, SI 1980/12 (amended by SI 1984/1326; SI 1990/2371; SI 1994/2920; SI 1996/3124; and SI 2000/1673); the Importation of Animal Products and Poultry Products Order 1980, SI 1980/14 (amended by SI 1982/948; SI 1990/2371; SI 1994/2920; SI 1994/3142; SI 1994/3144; SI 1996/3124; SI 1996/3125; SI 1997/322; and SI 2002/1227); the Importation of Animal Pathogens Order 1980, SI 1980/1212 (amended by SI 2006/2407); the Importation of Processed Animal Protein Order 1981, SI 1981/677 (amended by SI 1982/459; and SI 1990/2371); the Importation of Salmonid Viscera Order 1986, SI 1986/2265 (amended by SI 1996/3124); the Shellfish and Specified Fish (Third Country Imports) Order 1992, SI 1992/3301 (amended by SI 2000/1673); the Animals (Post-Import Control) Order 1995, SI 1995/2439; the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228 (amended by SI 2007/1998; SI 2008/1180); the Transmissible Spongiform Encephalopathies (Wales) Regulations 2006, SI 2006/1226 (amended by SI 2007/2244; SI 2008/1182); the Non Commercial Movement of Pet Animals (England) Regulations 2004; the Non Commercial Movement of Pet Animals (England) Regulations 2004, SI 2004/2363; the Tuberculosis (England) Order 2007, SI 2007/740; the Tuberculosis (Wales) Order 2006, SI 2006/1053.

Orders must be laid before both Houses of Parliament: Animal Health Act 1981 s 10(6).

Some of the orders cited do not apply to imports from other member states or in certain cases from specified third countries: Products of Animal Origin (Import and Export) Regulations 1996, SI 1996/3124, reg 40, Sch 5; Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 35, Sch 9 (reg 35 substituted by SI 2007/1621); Animals and Animal Products (Import and Export) (Wales) Regulations 2006, SI 2006/1536, reg 35, Sch 9 (reg 35 substituted by SI 2007/1627). The orders which do not apply (or partially do not apply) are the Hares (Control of Importation) Order 1965, SI 1965/2040; the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211; the Importation of Animals Order 1977, SI 1977/944; the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211; the Importation of Birds, Poultry and Hatching Eggs Order 1979, SI 1979/1702; the Importation of Hay and Straw Order 1979, SI 1979/1703; the Importation of Embryos, Ova and Semen Order 1980, SI 1980/12 (which, in relation to England, does not apply to products to which the Products of Animal Origin (Third Country Imports) (England) (No 4) Regulations 2004, SI 2004/3388, apply, except embryos, ova and semen of the ovine and caprine species: reg 67(1)); the Importation of Animal Products and Poultry Products Order 1980, SI 1980/14 (which, in relation to England, does not apply to products to which the Products of Animal Origin (Third Country Imports) (England) (No 4) Regulations 2004, SI 2004/3388, apply, except the products referred to in reg 4: reg 67(2)); the Importation of Salmonid Viscera Order 1986, SI 1986/2265; and the Shellfish and Specified Fish (Third Country Imports) Order 1992, SI 1992/3301.

3 'Disease' is not here restricted by its definition in the Animal Health Act 1981: s 10(4).

4 The time of importation is taken to be (1) in the case of goods brought by sea, the time when the carrying ship comes within the limits of a port; and (2) in the case of goods brought by air, the time when the carrying aircraft lands in the United Kingdom or when the goods are unloaded in the United Kingdom, whichever is the earlier: Customs and Excise Management Act 1979 s 5(2)(a), (b), applied by the Animal Health Act 1981 s 10(7).

In relation to anything brought through the Channel Tunnel, see the Channel Tunnel (Customs and Excise) Order 1990, SI 1990/2167, art 5(1), (2), applied by the Animal Health Act 1981 s 10(7) (amended by SI 1990/2371; and SI 1993/1813).

An order may provide that, in such circumstances as may be specified in the order, animals which are brought into Great Britain in such circumstances that they are not imported, within the meaning of these provisions, and whilst outside Great Britain have been or may have been in contact with any of the things specified in heads (1) to (3) in the text, are to be deemed for these purposes to be imported at the time when they are brought into Great Britain: Animal Health Act 1981 s 10(3).

5 'Animals' here includes any kind of mammal, except man, any kind of four-footed beast which is not a mammal, and other fish, reptiles, crustaceans and other cold-blooded creatures: Animal Health Act 1981 s 10(4); and the powers described have effect in relation to poultry: see s 87(4).

6 Animal Health Act 1981 s 10(1). See the orders cited in note 2. As to European Community provisions relating to import of animals see **AGRICULTURAL MARKETING AND PRODUCTION** vol 1 (2008) PARA 701 et seq.

7 Animal Health Act 1981 s 10(2)(a).

8 Animal Health Act 1981 s 10(2)(b).

9 Animal Health Act 1981 s 10(2)(d), Sch 2 (Sch 2 amended by the Animal Health (Amendment) Act 1998 s 1).

10 Animal Health Act 1981 s 10(2)(c).

11 Animal Health Act 1981 s 10(5); see PARA 1054.

12 Animal Health Act 1981 s 10(8) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the requirements of the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1081 Import of animals: general powers

NOTE 2--SI 1977/944 further amended: see PARA 868. SI 2004/3388 replaced: Products of Animal Origin (Third Country Imports) (England) Regulations 2006, SI 2006/2841 (amended by SI 2009/875). SI 2006/1228, SI 2006/1226 replaced by Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881; Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154: see PARA 1071. SI 2006/1471 reg 35 amended: SI 2008/3203. SI 2006/1536 reg 35 amended: SI 2009/390. SI 2007/740 amended: see PARA 1041. SI 2006/1053 replaced: Tuberculosis (Wales) Order 2010, SI 2010/1379.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(x) Import and Export/A. IMPORT/1082. Annual review of import controls.

1082. Annual review of import controls.

The Secretary of State and the Welsh Ministers¹ must prepare a report during each financial year which will:

- 265 (1) review all activities of government departments, the Food Standards Agency, local authorities, customs, police authorities and other relevant public agencies directed to the prevention of the introduction of disease into or within England and Wales through the importation of animal products and matter, whether animate or inanimate, and other things²;
- 266 (2) identify the nature, origin and quantity of such animal products and matter and stating whether the product or matter was destined for personal or commercial consumption³;
- 267 (3) assess the making of any orders as to import control⁴;
- 268 (4) assess the effectiveness of any action taken under such an order⁵; and
- 269 (5) propose such further action as may, on the basis of advice given to the Secretary of State or the Welsh Ministers by suitably qualified individuals appointed as scientific advisers, be required to further reduce the risk of disease being imported⁶.

The report must be laid before Parliament and the Welsh Assembly at the end of each financial year⁷.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 Animal Health Act 1981 s 10A(1)(a) (s 10A added by the Animal Health Act 2002 s 17).

3 Animal Health Act 1981 s 10A(1)(b) (as added: see note 2).

4 Animal Health Act 1981 s 10A(1)(c) (as added: see note 2). This refers to orders under s 10; see PARA 1081.

5 Animal Health Act 1981 s 10A(1)(d) (as added: see note 2).

6 Animal Health Act 1981 s 10A(1)(e) (as added: see note 2).

7 Animal Health Act 1981 s 10A(2) (as added: see note 2).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(x) Import and Export/A. IMPORT/1083. Import and export of animals and animal products.

1083. Import and export of animals and animal products.

Regulations¹ have been made implementing European Community legislation concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products and laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries².

The export, import or transport for intra-Community trade of any animal or animal product to which one of the specified directives applies is prohibited except in compliance with that directive³. Dealers in animals or animal products may be required to register⁴. Veterinary inspectors have powers of entry and powers to inspect and examine animals and animal products⁵. Duties are placed on the consignees of consignments of animals or animal products and there is a procedure for veterinary inspectors to follow in the case of a suspected illegal consignment⁶. The consignor has the right to request notification of any decision refusing entry⁷.

The import of animals and products of animal origin from third countries is prohibited unless certain conditions are complied with⁸, the import takes place at specified border inspection posts⁹ and the specified procedure is followed¹⁰. Provision is made in relation to the quarantine of captive birds¹¹, consignments constituting a danger to health¹², illegal consignments¹³ and the detention of animals for breeding and production until their release has been authorised¹⁴. Separate provision is made for the import of animals originating outside the Community where checks have been carried out in another member state¹⁵. Specific provision is made in respect of any animal, semen, ovum or embryo exported other than to a member state¹⁶. General provisions deal with the Secretary of State's powers on the outbreak of disease¹⁷.

Contravention of any of the above provisions is an offence¹⁸ punishable on summary conviction by a fine not exceeding the statutory maximum¹⁹ or up to three months' imprisonment²⁰, or on conviction on indictment by an unlimited fine or up to two years' imprisonment, or both²¹. It is also an offence to obstruct any person acting in execution of the above provisions²².

1 See the Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471 (amended by SI 2006/2126; SI 2007/1621; and SI 2007/3277). Similar provision is made in relation to Wales by the Animals and Animal Products (Import and Export) (Wales) Regulations 2006, SI 2006/1536 (amended by SI 2007/1627; and SI 2007/3279). The regulations do not apply to veterinary checks on movements of pets (other than equidae) accompanied by and under the responsibility of a natural person, where such movements are not the subject of a commercial transaction: Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 2 (amended by SI 2007/3277). The regulations are enforced by local authorities, or in a particular case by the Secretary of State if he so directs: Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 3.

2 See particularly EC Council Directive 90/425 (OJ L224, 18.8.90, p 29) concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the single market; and EC Council Directive 91/496 (OJ L268, 24.9.91, p 56) laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries.

3 See the Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, regs 4-7, Schs 3, 4 (Sch 3 amended by SI 2007/1621; and SI 2007/3277). A measure concerned with the conservation of biodiversity among animals is permitted under EC Treaty art 30 provided the measure is appropriate and proportionate: Case C-67/97 *Criminal Proceedings against Bluhme* [1998] ECR I-8033, [1999] 1 CMLR 612, ECJ.

4 Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 8.

5 See the Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, regs 10, 30, Sch 3 (as amended: see note 3). For fees charged for veterinary and health inspections in accordance with the Regulations see the Animals (Third Country Imports) (Charges) Regulations 1997, SI 1997/639. The consignor, his representative and the person in charge of any animal or animal product are jointly and severally liable for any reasonable expenses incurred in connection with the exercise of an inspector's powers: Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 30 (substituted by SI 2007/1621).

6 See the Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, regs 11-13, Sch 6.

7 See the Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 29.

8 See the Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, regs 14-16, Sch 7 (Sch 7 amended by SI 2007/1621; and SI 2007/3277).

9 See the Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 17, Sch 2. As to the payment of fees for veterinary checks see reg 20.

10 See the Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 18, Sch 7 (as amended: see note 8).

11 See the Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 19, Sch 8 (both substituted by SI 2007/1621).

12 See the Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 21.

13 See the Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 22.

14 See the Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 23. Where a veterinary inspector knows or suspects that import conditions have not been complied with, he may carry out post-import checks: reg 24.

15 See the Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, regs 25-27.

16 See the Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, regs 27A, 27B, Sch 8A (added by SI 2007/3277).

17 See the Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 28, Sch 6. As to the Secretary of State see PARA 705.

18 Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 34(1). As to offences by bodies corporate see reg 33.

19 As to the statutory maximum see PARA 877 note 6.

20 Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 34(4) (a).

21 Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 34(4) (b). Certain contraventions are not offences: see reg 34(1), (2).

22 Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 32. The penalty on summary conviction is a fine not exceeding level 5 on the standard scale or up to three months' imprisonment: reg 34(3). As to the standard scale see PARA 738 note 1.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1083 Import and export of animals and animal products

NOTE 1--SI 2006/1471 further amended: SI 2008/3203. SI 2006/1536 further amended: SI 2009/390.

NOTE 3--SI 2006/1471 Sch 3 substituted: SI 2008/3203.

NOTE 8--SI 2006/1471 Sch 7 substituted: SI 2008/3203.

NOTE 9--SI 2006/1471 Sch 2 substituted: SI 2008/3203.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(x) Import and Export/A. IMPORT/1084. Import and export of products of animal origin.

1084. Import and export of products of animal origin.

Various regulations are made implementing European legislation on the veterinary and other checks which must be made in the course of trade in products of animal origin. In particular, regulations of a general nature govern (1) the import and export of such products in the context of intra-Community trade¹; and (2) imports of such products from third countries².

Provision in relation to particular products, or products of a particular type, has also been made³, as has provision in relation to the importation of ova, semen and embryos⁴, and products intended for animal feedingstuffs⁵.

1 See the Products of Animal Origin (Import and Export) Regulations 1996, SI 1996/3124 (amended by SI 1997/3023; SI 1998/994; SI 1999/683; SI 2000/656; and SI 2006/2407; in relation to England only, by SI 2000/2215, SI 2001/1553, SI 2001/1640, SI 2001/3399, SI 2002/889, SI 2003/3003, SI 2003/3177, SI 2005/209; and in relation to Wales only, by SI 2000/2257, SI 2001/1660, SI 2001/2198, SI 2001/2219, SI 2002/47, SI 2002/1476, SI 2003/3229, SI 2005/1310). These regulations implement, in particular, EC Council Directive 89/662 (OJ L395, 30.12.89, p 13) concerning veterinary checks in intra-Community trade with a view to the completion of the internal market; EC Council Directive 90/675 (OJ L373, 31.12.90, p 1) laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries; and EC Council Directive 92/118 (OJ L62, 15.3.93, p 49) laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to such requirements laid down in EC Council Directive 89/662 and EC Council Directive 90/425. The regulations do not apply where the regulations mentioned in note 2 apply.

Functions of the Secretary of State under the Products of Animal Origin (Import and Export) Regulations 1996, SI 1996/3124, except those of the Secretary of State for Health under regs 3 and 4, so far as exercisable in relation to Wales, have been transferred to the Welsh Ministers: National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044, art 2, Sch 1; Government of Wales Act 2006.

2 See the Products of Animal Origin (Third Country Imports) (England) (No 4) Regulations 2004, SI 2004/3388 (amended by SI 2006/844); and the Products of Animal Origin (Third Country Imports) (Wales) Regulations 2005, SI 2005/666 (amended by SI 2005/3395; SI 2006/767; and SI 2006/1349). These regulations implement EC Council Directive 97/78 (OJ L24, 30.1.98, p 9) laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries.

3 See eg the Importation of Animal Products and Poultry Products Order 1980, SI 1980/14; the Importation of Processed Animal Protein Order 1981, SI 1981/677; the Import of Seal Skins Regulations 1996, SI 1996/2686; the Cattle Identification Regulations 2007, SI 2007/529 (amended by SI 2007/1046); and the Cattle Identification (Wales) Regulations 2007, SI 2007/842 (amended by SI 2007/3004) (see PARA 1080). In relation to England, the Importation of Animal Products and Poultry Products Order 1980, SI 1980/14, does not apply to products to which the Products of Animal Origin (Third Country Imports) (England) (No 4) Regulations 2004, SI 2004/3388, apply, except the products referred to in reg 4: reg 67(2).

4 See the Importation of Embryos, Ova and Semen Order 1980, SI 1980/12 (amended by SI 1984/1326; SI 1990/2371; SI 1994/2920); and the Importation of Bovine Semen Regulations 1984, SI 1984/1325 (amended by SI 1993/1966). In relation to England, the Importation of Embryos, Ova and Semen Order 1980, SI 1980/12, does not apply to products to which the Products of Animal Origin (Third Country Imports) (England) (No 4) Regulations 2004, SI 2004/3388, apply, except embryos, ova and semen of the ovine and caprine species; and the Importation of Bovine Semen Regulations 1984, SI 1984/1325, do not apply to products to which the Products of Animal Origin (Third Country Imports) (England) (No 4) Regulations 2004, SI 2004/3388, apply: reg 67(1), (3)(a).

5 See **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 941 et seq.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1084 Import and export of products of animal origin

NOTE 1--SI 1996/3124 further amended: SI 2009/2712 (England), SI 2010/619 (Wales).

NOTES 2-4--SI 2004/3388 replaced: Products of Animal Origin (Third Country Imports) (England) Regulations 2006, SI 2006/2841 (amended by SI 2009/875).

NOTE 2--SI 2005/666 replaced: Products of Animal Origin (Third Country Imports) (Wales) Regulations 2007, SI 2007/376 (amended by SI 2009/392, SI 2009/1088).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(x) Import and Export/A. IMPORT/1085. Controls on import of ruminating animals, swine and elephants.

1085. Controls on import of ruminating animals, swine and elephants.

The importation of cattle, sheep, goats and all other ruminating animals and swine and elephants¹ is regulated by order². The landing³ of any such animal is prohibited except under a licence (general or specific) granted by the Secretary of State or the Welsh Ministers, which may contain conditions designed to prevent disease and protect animals from unnecessary suffering⁴. A licence is also required for animals on board a vessel which enters a harbour even if the animals are not landed⁵. However, in exceptional circumstances, imported animals not licensed to be landed, or ships not licensed to enter a harbour, may do so under the supervision of a veterinary inspector⁶. The other main provisions of the order concern (1) the carriage of injured or diseased animals or animals which die during carriage⁷; (2) the unloading of animals and carcasses⁸; (3) the movement of animals after unloading⁹; (4) the control of animals intended for re-export¹⁰; (5) the approval and regulation of premises for reception and quarantine¹¹; and (6) the action to be taken in the case of injury or disease among animals (which may include the slaughter of animals without payment of compensation)¹². Local authorities are made responsible for enforcing the order¹³. Any landing of an animal in Great Britain without an import licence, or which contravenes such a licence, or any contravention of the statutory provisions or of the provisions of a licence, may result in the detention, re-export or slaughter of the animal¹⁴.

Certain offences involving intent to evade the provisions of this order may be prosecuted on indictment¹⁵.

Additional post-import controls are imposed in relation to cattle, pigs, sheep and goats in certain specified circumstances¹⁶.

1 Importation of Animals Order 1977, SI 1977/944, art 2(1) (definition of 'animal' amended by SI 1996/1760). In this context, 'ruminating animals' includes llamas, guanacos, alpacas, vicunas, Bactrian camels and Arabian camels: Importation of Animals Order 1977, SI 1977/944, art 2(1).

2 See the Importation of Animals Order 1977, SI 1977/944 (amended by SI 1990/2371; SI 1992/1361; SI 1992/3159; SI 1995/2922; SI 1996/1760; SI 2000/1618; SI 2000/1673; and SI 2001/2662), made under the powers described in PARA 1081.

Some provisions of the Order do not apply to imports from other member states or in certain cases from specified third countries: Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 35, Sch 9 (reg 35 substituted by SI 2007/1621); Animals and Animal Products (Import and Export) (Wales) Regulations 2006, SI 2006/1536, reg 35, Sch 9 (reg 35 substituted by SI 2007/1627).

3 In this context an animal is deemed to have been landed (1) if it has been carried by sea, immediately it is put or otherwise arrives on land in Great Britain; (2) if it has been carried by air, immediately the aircraft touches down in Great Britain; (3) if it has been carried by a vehicle or otherwise arrives through the Channel Tunnel, immediately it crosses the frontier: Importation of Animals Order 1977, SI 1977/944, art 2(3) (amended by SI 1990/2371). As to the meaning of 'Great Britain' see PARA 830 note 21.

4 Importation of Animals Order 1977, SI 1977/944, art 3(1)-(3). A licence must designate the ports and airports at which animals may be landed, and must specify approved premises to which animals are authorised to be moved after landing: art 3(5). A licence must be produced on demand made by a Customs and Excise officer, a veterinary inspector or an officer of the Secretary of State, or an inspector of the local authority or a constable, who may take copies or extracts: art 20. A general import licence may be granted: art 3(4). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

5 See the Importation of Animals Order 1977, SI 1977/944, art 16. As to the meaning of 'vessel' see PARA 868 note 3.

6 Importation of Animals Order 1977, SI 1977/944, art 17. See also note 5.

7 Importation of Animals Order 1977, SI 1977/944, arts 4(2)-(8), 7 (art 4 amended by SI 1995/2922). In general it is prohibited to unload such an animal without the written consent of a divisional veterinary manager: Importation of Animals Order 1977, SI 1977/944, art 4(2). As to divisional veterinary managers see PARA 1120.

8 Importation of Animals Order 1977, SI 1977/944, arts 5, 7 (amended by SI 1995/2922; SI 2000/1618 (England); SI 2001/2662 (Wales)).

9 Importation of Animals Order 1977, SI 1977/944, art 8. See also note 11. See also *Gaisford v Ministry of Agriculture, Fisheries and Food* (1996) Times, 19 July, on the question of whether the Secretary of State can be liable for failing to identify disease during post-import controls.

10 If such animals are in fact exported within the time specified by the import licence for re-export, and while in Great Britain are dealt with according to the terms of the licence, they do not have to be detained at approved premises: Importation of Animals Order 1977, SI 1977/944, art 9.

11 Importation of Animals Order 1977, SI 1977/944, arts 10, 11. A reception centre must be at or near the port or airport in question, and quarantine premises must be at the port or airport and located so that there is no significant risk of the spread of disease through the movement of animals thereto: art 10(2).

In default of the owner, master or operator carrying out cleansing and disinfection as required, the local authority, veterinary inspector or other person acting for the Secretary of State may do so, and recover the expenses as a civil debt: arts 18, 19(2). As to the recovery of civil debts see the Magistrates' Courts Act 1980 ss 58, 96; and **MAGISTRATES** vol 29(2) (Reissue) PARAS 826, 828.

12 Importation of Animals Order 1977, SI 1977/944, arts 12, 13, 19(1).

13 Importation of Animals Order 1977, SI 1977/944, art 22.

14 Importation of Animals Order 1977, SI 1977/944, art 14.

15 See the Importation of Animals Order 1977, SI 1977/944, art 21(1). As to offences not triable on indictment see art 21(2); and PARA 1098 et seq.

16 See the Animals (Post-Import Control) Order 1995, SI 1995/2439.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1085 Controls on import of ruminating animals, swine and elephants

NOTE 2--SI 2006/1471 reg 35 amended: SI 2008/3203. SI 2006/1536 reg 35 amended: SI 2009/390.

NOTES 7, 8--SI 1977/944 arts 4, 5 amended to replace references to 'divisional veterinary manager' with references to 'Secretary of State': SI 2009/2713 (England).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(x) Import and Export/A. IMPORT/1086. Landing of docked horses.

1086. Landing of docked horses.

No docked¹ horse² coming from outside the United Kingdom may be landed from a ship, aircraft or hovercraft unless permitted to do so by a customs officer, who must be satisfied that it will be exported as soon as practicable, or under licence granted by the Secretary of State or the Welsh Ministers, who must be satisfied that it is to be used for breeding purposes³.

An offence, the penalty for which on summary conviction is a customs penalty⁴ or, as the case may be, a fine, not exceeding level 3 on the standard scale⁵ or imprisonment for a term not exceeding three months, or both, is committed by any person who lands a horse or causes or permits a horse to be landed in contravention of this provision or who, for the purpose of obtaining permission from a customs officer or a licence from the Secretary of State or the Welsh Ministers, makes any statement that he knows to be false⁶ in a material particular⁷ or recklessly makes any statement that is false in a material particular⁸.

1 'Docking' means the deliberate removal of any bone or any part of a bone from the tail of a horse, and the expression 'docked' is to be construed accordingly: Docking and Nicking of Horses Act 1949 s 3.

2 As to the meaning of 'horse' see PARA 817 note 23.

3 Docking and Nicking of Horses Act 1949 s 2(1), (2) (s 2(1) amended by SI 1955/554); Hovercraft Act 1968 s 3, Sch 1 para 1(e). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

4 As to the recovery of customs penalties see **CUSTOMS AND EXCISE**.

5 As to the standard scale see PARA 738 note 1.

6 See *R v Lord Kylsant* [1932] 1 KB 442, CCA; *R v Bishirgian* [1936] 1 All ER 586, CCA; *Jones v Meatyard* [1939] 1 All ER 140; and *Stevens and Steeds Ltd and Evans v King* [1943] 1 All ER 314. See further **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

7 A particular may be material on the mere ground that it renders something else more credible: *R v Tyson* (1867) LR 1 CCR 107, a case under the Perjury Act 1911 s 1. As to materiality under that section see further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 715.

8 Docking and Nicking of Horses Act 1949 s 2(3), (4) (amended by the Criminal Justice Act 1982 s 46; and SI 1955/554). As from a day to be appointed, the maximum term of imprisonment is increased to 51 weeks: Docking and Nicking of Horses Act 1949 s 2(3), (4) (prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 13(1), (3)). At the date at which this volume states the law, no such day had been appointed.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(x) Import and Export/B. EXPORT/1087.
Regulation of exports.

B. EXPORT

1087. Regulation of exports.

For the purpose of preventing the conveyance of disease¹ by animals exported from Great Britain, the Secretary of State or the Welsh Ministers² may, with Treasury consent, provide facilities for the examination of animals³ intended for export and provide or approve export quarantine stations for their reception, isolation and examination⁴. No compensation is payable in respect of any animal intended for export which, by reason of its having been diseased or suspected, or of its having been exposed to the infection of any disease, is slaughtered in an export quarantine station⁵.

In the interests of animal or human health the Secretary of State or the Welsh Ministers may by order⁶ make provision for regulating the export from Great Britain to a member state of the European Community of animals or poultry or their carcasses, and in particular for prohibiting exports without a prescribed certificate or licence, and as to the circumstances in which and the conditions on which a certificate or licence may be obtained⁷.

Additionally, the Secretary of State or the Welsh Ministers may by order provide in the interests of animal welfare for regulating the export of animals from Great Britain to any country; in particular, they may provide for exportation to be prohibited without a prescribed certificate or licence, and for requiring persons proposing to export animals to furnish information about the animals' intended ultimate destination and the arrangements for conveying them there, and any other matters that may be specified⁸.

1 As to the meaning of 'disease' see PARA 1042.

2 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

3 As to the meaning of 'animals' see PARA 1041.

4 Animal Health Act 1981 s 12(1). See the Export Quarantine Stations (Regulation) Order 1973, SI 1973/824, for provisions regulating export quarantine stations.

5 Animal Health Act 1981 s 12(2).

6 See the Export of Sheep (Prohibition) Order 1991, SI 1991/58; the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228 (amended by SI 2007/1998; SI 2008/1180); and the Transmissible Spongiform Encephalopathies (Wales) Regulations 2006, SI 2006/1226 (amended by SI 2007/2244; SI 2008/1182). See also the Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471 (amended by SI 2006/2126; SI 2007/1621; and SI 2007/3277); and the Animals and Animal Products (Import and Export) (Wales) Regulations 2006, SI 2006/1536 (amended by SI 2007/1627; and SI 2007/3279); and PARA 1083. See also the Avian Influenza and Influenza of Avian Origin in Mammals (England) Order (No 2) Order 2006, SI 2006/2702; the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006, SI 2006/2927; the Avian Influenza (H5N1 in Poultry) (England) Order 2006, SI 2006/3247 (amended by SI 2007/3303); and the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006, SI 2006/3309 (amended by SI 2007/3375).

7 Animal Health Act 1981 s 11. See also PARA 1084.

8 Animal Health Act 1981 s 39. See the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260; the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047; and PARA 868.

As to the liability of veterinary inspectors for applying a false trade description by issuing health certificates when they had not inspected all the animals covered by the certificate see *Roberts v Leonard* (1995) 159 JP 711, DC; and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 475.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1087 Regulation of exports

NOTE 6--SI 2006/1228, SI 2006/1226 replaced by Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881; Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154: see PARA 1071. SI 2006/1471 further amended: SI 2008/3203. SI 2006/1536 further amended: SI 2009/390. SI 2006/2702 amended: see PARA 868.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(x) Import and Export/B. EXPORT/1088. Horses, asses, mules and ponies.

1088. Horses, asses, mules and ponies.

The shipment or attempted shipment by sea or air, except in such cases as the Secretary of State or the Welsh Ministers¹ may by order² prescribe, of any horse³ in any vessel or aircraft from any port or aerodrome⁴ in Great Britain to any port or aerodrome in Europe other than in the Republic of Ireland outside the United Kingdom, the Channel Islands and the Isle of Man, is an offence unless immediately before shipment the horse has been examined by a veterinary inspector appointed by the Secretary of State or the Welsh Ministers and has been certified in writing⁵ by him to be capable of being conveyed to such port or aerodrome and disembarked or landed without cruelty, and to be capable of being worked without suffering⁶.

Where the inspector is satisfied that the animal is a heavy draft horse, a vanner, mule or jennet (or hinny), or an ass, shipment is unlawful unless in the inspector's opinion the animal is not more than eight years of age and is of not less than a certain value⁷. These further conditions do not apply in the case of a horse intended to be used as a performing animal, or a horse, or foal at foot accompanying a horse, which is registered in the stud book of a recognised society for the encouragement of horse-breeding and which is intended to be used for breeding or exhibition purposes⁸.

The shipment of any pony⁹ in any vessel or aircraft from any port or aerodrome in Great Britain to any port or aerodrome outside the United Kingdom, the Channel Islands and the Isle of Man is similarly an offence unless the Secretary of State or the Welsh Ministers are satisfied that the pony is intended for breeding, riding or exhibition, and is of not less than a certain value¹⁰, and immediately before shipment it has been individually inspected by a veterinary inspector and certified in writing¹¹ to be capable of being conveyed to its destination and disembarked or landed without unnecessary suffering¹².

If any horse or pony is found on examination or inspection to be in such a physical condition that it is cruel to keep it alive, or to be permanently incapable of being worked without suffering, the inspector must forthwith slaughter it or cause it to be slaughtered with a suitable mechanically operated instrument, and no compensation is payable to its owner¹³. The veterinary inspector may mark a horse certified by him in the prescribed manner, and it is an offence for any person with a view to evading the above provisions to mark a horse with the prescribed mark or any mark so nearly resembling it as to be calculated to deceive¹⁴.

If a horse shipped from any port in Great Britain to any port outside the United Kingdom, Channel Islands and the Isle of Man has a limb broken or is otherwise seriously injured so as to be incapable of being disembarked without cruelty, the master of the vessel must forthwith cause it to be slaughtered¹⁵. It is the duty of the owner and master to see that the vessel is provided with a proper killing instrument¹⁶.

None of the above provisions¹⁷ applies in the case of a thoroughbred horse certified in writing¹⁸ by a steward or the secretary of the Jockey Club to have arrived in Great Britain not more than one month before the date of shipment for the purpose of being run in a race, or to be shipped for the purpose of being run in a race, or to be shipped in order to be used for breeding purposes¹⁹.

The shipment of a registered pony²⁰ is an offence unless there has first been obtained from the secretary of a society in whose stud book the pony is registered a certificate²¹ that the pony is registered with that society²².

Inspectors of the Secretary of State or the Welsh Ministers and of local authorities may enter vessels and aircraft to ascertain whether these provisions²³ are being complied with²⁴. It is the duty of local authorities to enforce the provisions in so far as the Secretary of State or the Welsh Ministers by order direct²⁵, and any person infringing them is guilty of an offence against the Animal Health Act 1981²⁶.

Orders have been made supplementing these provisions²⁷.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 See the Export of Horses (Excepted Cases) Order 1969, SI 1969/1742 (amended by SI 1972/971), which, by art 3, exempts from these provisions any horse shipped to any port or aerodrome which is in the Republic of Ireland or which is not in Europe, or which the Secretary of State is satisfied is intended for exhibition, breeding, racing, jumping, riding or polo, or a foal travelling with its dam if the dam is any such horse.

3 'Horse' includes an ass or mule: Animal Health Act 1981 s 89(1). Hinnies or jennets are not mentioned. As to ponies see the text to notes 9-12. As to thoroughbreds see the text to notes 18-19.

4 'Aerodrome' means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft: Animal Health Act 1981 s 89(1).

5 The certificate must be delivered at the time of shipment to the master of the vessel or pilot of the aircraft on which the animal is shipped, and he must on demand produce it to and allow it to be copied by any constable or inspector or other officer of the Secretary of State, the Welsh Ministers or local authority: Animal Health Act 1981 s 48.

6 Animal Health Act 1981 s 40(1), (2); Export of Horses (Excepted Cases) Order 1969, SI 1969/1742, art 3(a). As to the inspection of horses which are exempted from these provisions, other than horses shipped from Great Britain to any place outside Europe, see the Export of Horses (Protection) Order 1969, SI 1969/1784, art 7. As to the penalties for offences against the Animal Health Act 1981 see PARA 1101.

7 Animal Health Act 1981 s 40(3). The values are: heavy draft horse, £715; vanner, mule or jennet, £495; ass, £220: s 40(3).

8 Animal Health Act 1981 s 40(4).

9 'Pony' means a horse not more than 147 centimetres in height, except a foal travelling with its dam if the dam is over 147 centimetres: Animal Health Act 1981 s 89(1).

10 le £300; or in the case of a pony not exceeding 122 centimetres in height (other than a Shetland pony not exceeding 107 centimetres in height), £220; or in the case of such a Shetland pony, £145: Animal Health Act 1981 s 41(1)(a).

11 See note 5.

12 Animal Health Act 1981 s 41(1)(b). A pony may not be so certified if, being a mare, it is, in the inspector's opinion, heavy in foal, showing fullness of udder or too old to travel or, being a foal, if it is in his opinion too young to travel: s 41(2). As to the penalties for offences against the Act see PARA 1101.

13 Animal Health Act 1981 s 44.

14 Animal Health Act 1981 s 45. As to the penalties for offences against the Act see PARA 1101.

15 Animal Health Act 1981 s 46(1). Note that there is no corresponding duty in respect of the pilot of an aircraft; hovercraft, however, are included: see s 90.

16 Animal Health Act 1981 s 46(2).

17 le the Animal Health Act 1981 ss 40, 41, 46.

18 See note 5.

19 Animal Health Act 1981 s 47.

20 'Registered pony' means a pony registered in the stud book of the Arab Horse Society, National Pony Society, British Palomino Society, British Spotted Horse and Pony Society or the breed society for English

Connemara, Dales, Dartmoor, Exmoor, Fell, Highland, New Forest, Shetland or Welsh ponies: Animal Health Act 1981 s 42.

21 See note 5.

22 Animal Health Act 1981 s 42. As to the penalties for offences against the Act see PARA 1101.

23 In the provisions of the Animal Health Act 1981 ss 40-42, 44-48, and any order made under the Act relating to the exportation or shipment of horses: s 49(1).

24 Animal Health Act 1981 s 49(1).

25 Animal Health Act 1981 s 49(2).

26 Animal Health Act 1981 s 49(3). As to the penalties for offences against the Act see PARA 1101.

27 See the Animal Health Act 1981 s 43; and the Export of Horses (Veterinary Examination) Order 1966, SI 1966/507 (amended by SI 1995/2922); the Export of Horses (Excepted Cases) Order 1969, SI 1969/1742; and the Export of Horses (Protection) Order 1969, SI 1969/1784.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1088 Horses, asses, mules and ponies

NOTE 27--SI 1966/507 further amended: SI 2009/2713 (England).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(xi) Slaughter of Animals/1089. Slaughter of animals.

(xi) Slaughter of Animals

1089. Slaughter of animals.

The Secretary of State or the Welsh Ministers must cause to be slaughtered¹ all animals² affected with cattle plague³ and all cattle⁴ affected with pleuro-pneumonia⁵. A local authority must cause to be slaughtered every animal within its district which is affected with or suspected of rabies or which is shown to the satisfaction of an inspector to have been bitten by an animal so affected⁶.

The Secretary of State or the Welsh Ministers may cause animals to be slaughtered in connection with controlling the spread of foot-and-mouth disease⁷, swine fever⁸, cattle plague⁹ or pleuro-pneumonia¹⁰.

They may, if they think fit, cause to be slaughtered any animal which is affected or suspected of being affected with any disease to which these provisions have been applied¹¹, or has been exposed to the infection of any such disease¹².

The Secretary of State or the Welsh Ministers may also by order provide for the destruction of wild members of one or more species in any area, if he is or they are satisfied that in that area there exists in the wild members of the species a disease (other than rabies) which is being or has been transmitted from members of the species to animals of any kind in the area, and destruction of members of the species is necessary to eliminate or substantially to reduce the incidence of that disease in animals of any kind in the area¹³. Where an authorised officer¹⁴ reasonably suspects that a disease exists among the wild members of any species in an area he may enter any land in the area and take samples of the wild members of the species and of things with which they may have been in contact, and carry out other necessary investigations with a view to determining whether a destruction order should be made¹⁵. An authorised officer may also enter land to carry out destruction under such an order¹⁶, or to determine whether the species in question is recolonising the area¹⁷, but he is not empowered to enter a dwelling-house¹⁸. In exercising any such power of entry, the authorised officer must, if required by the owner or occupier or person in charge of the land, produce proof of his authority and state in writing his reasons for entering¹⁹.

Notwithstanding the above provisions the Secretary of State or the Welsh Ministers may reserve for observation and treatment any animal liable to be slaughtered, subject to the payment of compensation as in the case of actual slaughter²⁰.

The provisions made in relation to foot-and-mouth disease concerning the preparation and effect of a disease control (slaughter) protocol²¹, and the requirement for reasons to be given for the use of slaughter rather than vaccination to control the spread of disease²², apply also to any disease specified by order made by the Secretary of State or the Welsh Ministers²³.

¹ As to the disposal of carcases after slaughter see generally PARA 1094. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

² As to the meaning of 'animal' see PARA 1041.

³ Animal Health Act 1981 s 31, Sch 3 para 1(1).

The Secretary of State or the Welsh Ministers may by order amend Sch 3 for the purpose of authorising or requiring the slaughter of animals to be caused with a view to preventing the spread of disease other than foot-

and-mouth disease; and requiring the payment of compensation in respect of animals slaughtered by virtue of the order: s 32A(1) (s 32A added by the Animal Health Act 2002 s 2(1)). Such an order may include amendments corresponding to those made by the Animal Health Act 2002 (see PARA 1062); amendments as to slaughter in relation to any disease not otherwise referred to in the Animal Health Act 1981 Sch 3; and supplementary or incidental provisions: s 32A(2) (as so added). As respects England, no such order may be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House: s 32A(3) (as so added). As to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. At the date at which this volume states the law, no order had been made under this provision.

For the purposes of his powers under the Act relating to the slaughter by him of animals, the Secretary of State or the Welsh Ministers may employ such additional inspectors, valuers and other persons, and at such remuneration, and may incur such expenses, as, subject to the approval of the Minister for the Civil Service, he thinks necessary: s 33. See Avian Influenza and Newcastle Disease (England and Wales) Order 2003, SI 2003/1734.

4 As to the meaning of 'cattle' see PARA 1041 note 1.

5 Animal Health Act 1981 Sch 3 para 2(1). 'Pleuro-pneumonia' means contagious pleuro-pneumonia of cattle: s 89(1).

6 See the Rabies (Control) Order 1974, SI 1974/2212, art 8; and generally PARA 1057.

7 See the Animal Health Act 1981 Sch 3 para 3; and PARA 1062.

8 See the Animal Health Act 1981 Sch 3 para 4(1).

9 See the Animal Health Act 1981 Sch 3 para 1(2), (3).

10 See the Animal Health Act 1981 Sch 3 para 2(2), (4).

11 These provisions apply to such diseases of animals as may from time to time be directed by order: Animal Health Act 1981 s 32(2). See the Swine Vesicular Disease Order 1972, SI 1972/1980 (amended by SI 1973/101; SI 1977/944; and SI 1993/3119); the Aujeszky's Disease Order 1983, SI 1983/344 (amended by SI 1994/3141; SI 1995/11; SI 1995/2922); the Specified Diseases (Notification and Slaughter) Order 1992, SI 1992/3159 (amended by SI 1996/2628; SI 2006/2166; and SI 2006/2237); the Brucellosis (England) Order 2000, SI 2000/2055 (amended by SI 2008/618); the Enzootic Bovine Leukosis (England) Order 2000, SI 2000/2056; the African Swine Fever (England) Order 2003 SI 2003/2913; the African Swine Fever (Wales) Order 2003, SI 2003/3273; the Brucellosis (Wales) Order 2006, SI 2006/866; the Enzootic Bovine Leukosis (Wales) Order 2006, SI 2006/867; the Tuberculosis (England) Order 2006, SI 2007/740; the Tuberculosis (Wales) Order 2006, SI 2006/1053; the Bluetongue (No 2) Order 2007, SI 2007/3304 (amended by SI 2008/962); and the Bluetongue (No 2) (Wales) Order 2007, SI 2007/3309 (amended by SI 2008/1090). See also the Avian Influenza and Influenza of Avian Origin in Mammals (England) (No 2) Order 2006, SI 2006/2702; and the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006, SI 2006/2927.

In relation to England, where the Secretary of State causes a diseased equine animal to be slaughtered under the Animal Health Act 1981 s 32 in its application to equine infectious anaemia, the amount of compensation payable in relation to that animal is £1: Equine Infectious Anaemia (Compensation) (England) Order 2006, SI 2006/2740, art 2.

12 Animal Health Act 1981 s 32(1). 'Animal' in this context includes horses; and 'disease' in this context is not confined to the statutory definition (as to which see PARA 1042): s 32(4).

13 Animal Health Act 1981 s 21(1), (2). The Secretary of State or the Welsh Ministers must consult with the appropriate conservation body before making such an order: s 21(3) (amended by the Environmental Protection Act 1990 s 132, Sch 9 para 10; and the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 para 68(1), (2)). At the date at which this volume states the law, no such order is in force. However, for an example of an order previously having effect under these provisions, see the Badgers (Control Areas) Order 1977, SI 1977/1721 (revoked by SI 1986/2061). As to the details which may be contained in such an order, particularly with regard to methods of destruction and the power to prevent the movement of living creatures into an area to which an order applies, see the Animal Health Act 1981 s 21(4)-(10) (amended by the Environmental Protection Act 1990 Sch 9 para 10; and the Natural Environment and Rural Communities Act 2006 ss 105(1), 132, Sch 9 para 10(2), Sch 11 para 68(3)). As to the relevant conservation bodies (ie Natural England and the Countryside Council for Wales) see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 523, 524.

14 Ie an officer of the Secretary of State or the Welsh Ministers, a veterinary inspector or some other person authorised for the purpose: Animal Health Act 1981 s 22(1).

15 Animal Health Act 1981 s 22(2).

16 Animal Health Act 1981 s 22(3)(a). He is authorised to enter land to see if destruction has been effectively carried out: s 22(3)(c).

17 Animal Health Act 1981 s 22(4).

18 Animal Health Act 1981 s 22(5).

19 Animal Health Act 1981 s 22(6). An officer cannot demand entry to land forming part of a nature reserve (see **OPEN SPACES AND COUNTRYSIDE**) unless he has given seven days' notice; in the exercise of his functions on such land he must do so in such manner as to minimise damage to certain flora, fauna and physiographical or geological features: see s 22(7) (amended by the Environmental Protection Act 1990 Sch 9 para 10(3); and the Natural Environment and Rural Communities Act 2006 s 105(1), Sch 11 para 69).

20 Animal Health Act 1981 s 34(1).

21 Ie the Animal Health Act 1981 ss 32B, 32C; see PARA 1062.

22 Ie the Animal Health Act 1981 s 32D; see PARA 1062.

23 See the Animal Health Act 1981 ss 32B(1)(b), (c), 32D(1)(b) (ss 32B, 32D added by the Animal Health Act 2002 ss 3, 4). The orders referred to in the Animal Health Act 1981 s 32D are those under s 32A(1); see note 3. The power to make an order under the Animal Health Act 1981 s 32B must be exercised by statutory instrument subject, in relation to England, to annulment in pursuance of a resolution of either House of Parliament: s 32B(7) (as so added). As to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. At the date at which this volume states the law, no order had been made under this provision. See, however, the Avian Influenza and Newcastle Disease (Biosecurity Guidance and Disease Control (Slaughter) Protocol) (England and Wales) Order 2003, SI 2003/2035; the Avian Influenza (H5N1 in Wild Birds) (England) Order 2006, SI 2006/3249 (amended by SI 2007/3303); and the Avian Influenza (H5N1 in Wild Birds) (Wales) Order 2006, SI 2006/3310 (amended by SI 2007/3375).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1089 Slaughter of animals

NOTE 11--SI 1972/1980 (as amended) replaced by Swine Vesicular Disease Regulations 2009, SI 2009/1299 (England); Swine Vesicular Disease (Wales) Regulations 2009, SI 2009/1372: see PARA 1042. SI 1983/344, SI 2007/740 amended: see PARA 1041. SI 2000/2055, SI 2000/2056 amended: see PARA 1043. SI 2003/2913 amended: see PARA 1042. SI 2006/2702 amended: see PARA 868. SI 2006/1053 replaced: Tuberculosis (Wales) Order 2010, SI 2010/1379.

NOTE 13--See the Tuberculosis Eradication (Wales) Order 2009, SI 2009/2614, providing for the destruction of wild badgers in Wales, where necessary, in order to eliminate or substantially reduce the incidence of tuberculosis in animals of any kind in Wales. See also *R (on the application of Badger Trust) v Welsh Ministers* [2010] EWHC 768 (Admin), [2010] All ER (D) 94 (Apr) (non-selective badger cull in Wales to prevent spread of bovine tuberculosis allowed).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(xi) Slaughter of Animals/1090. Slaughter of vaccinated animals.

1090. Slaughter of vaccinated animals.

The provisions concerning the slaughter of animals which have previously been vaccinated against foot-and-mouth disease¹ apply also in relation to any disease specified by order made by the Secretary of State or the Welsh Ministers².

For any animal slaughtered under these provisions the Secretary of State or the Welsh Ministers must pay compensation of such amount as may be prescribed by order³.

¹ See the Animal Health Act 1981 s 16A; and PARA 1064.

² Animal Health Act 1981 s 16A(1) (s 16A added by the Animal Health Act 2002 s 5). As respects England, no such order may be made unless a draft has been laid before Parliament and approved by a resolution of each House: Animal Health Act 1981 s 16A(8) (as so added). As to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. For an order made under this provision see the Avian Influenza and Newcastle Disease (England and Wales) Order 2003, SI 2003/1734.

As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

³ Animal Health Act 1981 s 16A(4), (6). As respects England, a statutory instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament: s 16A(9) (as so added). As to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. At the date at which this volume states the law, no order had been made under this provision.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(xi) Slaughter of Animals/1091. Slaughter: power of entry.

1091. Slaughter: power of entry.

An inspector¹ may at any time enter any premises² for the purpose of ascertaining whether a power conferred by or under the Animal Health Act 1981 to cause an animal to be slaughtered should be exercised, or doing anything in pursuance of the exercise of that power³.

A justice of the peace may issue a warrant authorising a constable or an inspector to enter premises for that purpose, if he is satisfied on sworn information⁴ in writing that the condition in head (1) below is satisfied, and either the condition in head (2) or the condition in head (3) is satisfied⁵. Those conditions are that:

- 270 (1) there are reasonable grounds for an inspector to enter the land or premises for that purpose⁶;
- 271 (2) the occupier of the premises (a) has been informed of the decision to seek entry to the premises and of the reasons for that decision; (b) has failed to allow entry to the premises on being requested to do so by an inspector; and (c) has been informed of the decision to apply for the warrant⁷;
- 272 (3) either (a) the premises are unoccupied or the occupier is absent and (in either case) notice of intention to apply for the warrant has been left in a conspicuous place on the premises; or (b) an application for admission to the premises or the giving of notice of intention to apply for the warrant would defeat the object of entering the premises⁸.

The warrant may authorise the use, if necessary, of reasonable force⁹.

Where an inspector enters any land or premises by virtue of any of the provisions described above, he may take with him such other persons as he thinks necessary to give him such assistance as he thinks necessary, and such equipment as he thinks necessary¹⁰. He may require any person on the land or premises who is the occupier, who appears to have charge of animals on the premises, or who appears to be under the direction or control of the occupier or such a person, to give him such assistance as he may reasonably require¹¹. If he enters any unoccupied premises he must leave them as effectively secured against entry as he found them¹².

A person commits an offence if without lawful authority or excuse¹³ he refuses admission to any premises to a person acting as described above, or obstructs or impedes him in so acting, or assists in any such obstruction or impeding¹⁴.

1 As to inspectors see PARA 1096.

2 'Premises' includes any land, building or other place: Animal Health Act 1981 s 62A(2) (ss 62A-62C added by the Animal Health Act 2002 s 8(1)).

3 Animal Health Act 1981 s 62A(1) (as added: see note 2).

4 The information must include (1) a statement as to whether any representations have been made by the occupier of the land or premises to an inspector concerning the purpose for which the warrant is sought; and (2) a summary of any such representations: Animal Health Act 1981 s 62B(2) (as added: see note 2).

5 Animal Health Act 1981 s 62B(1) (as added: see note 2). If the inspector enters any premises by virtue of such a warrant he must, at the time of entry, serve a copy of the warrant on the occupier of the premises, or (if

the occupier is not on the premises) leave a copy of it in a conspicuous place on the premises: s 62C(5) (as so added).

A warrant remains in force for one month starting with the date of its approval by the justice of the peace; and the date must be clearly visible on the warrant: s 62B(6) (as so added). It must be executed only at a reasonable hour unless the inspector thinks that the case is one of urgency: s 62B(7) (as so added).

In relation to any premises to which entry is obtained by virtue of a warrant the Secretary of State or the Welsh Ministers must retain for a period of not less than 12 months (beginning with the day after entry) a copy of the warrant, and a copy of any record of the steps taken to effect entry to the premises and the actions taken on the premises by the inspector and any other person entering the premises with him: s 62B(8) (as so added).

6 Animal Health Act 1981 s 62B(3) (as added: see note 2).

7 Animal Health Act 1981 s 62B(4) (as added: see note 2).

8 Animal Health Act 1981 s 62B(5) (as added: see note 2).

9 Animal Health Act 1981 s 62B(1) (as added: see note 2).

10 Animal Health Act 1981 s 62C(1), (2) (as added: see note 2).

11 Animal Health Act 1981 s 62C(3), (4) (as added: see note 2). A person commits an offence if he is required to give assistance under s 62C(3), and fails to give it: s 66A(2) (s 66A added by the Animal Health Act 2002 s 8(2)). As to the penalties for offences against the Animal Health Act 1981 see PARA 1101.

12 Animal Health Act 1981 s 62C(6) (as added: see note 2).

13 Proof of lawful authority or excuse lies on the accused: Animal Health Act 1981 s 66A(1) (as added: see note 11).

14 Animal Health Act 1981 s 66A(1) (as added: see note 11). As to the penalties for offences against the Act see PARA 1101.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(xi) Slaughter of Animals/1092. Compensation for slaughter.

1092. Compensation for slaughter.

Compensation is payable to persons whose animals are slaughtered for the common good. The rate varies according to the disease for the prevention of which the animal was slaughtered, and according to whether the animal was actually affected with disease or not¹. If the sum received by the Secretary of State or the Welsh Ministers on sale of a carcase exceeds the amount paid for compensation to the owner of the slaughtered animal, the Secretary of State or the Welsh Ministers must pay that excess to the owner after deducting reasonable expenses².

When insurance is payable upon animals thus slaughtered, the insurers may deduct the amount of compensation received by the owner before they make the payment³.

Unless some other method of ascertaining the value of any animal or bird the subject of compensation is prescribed⁴, the Secretary of State or the Welsh Ministers must, as soon as practicable, give a written statement of value to the owner and if the owner does not within 14 days serve a written counter-notice disputing the valuation, that sum becomes the compensation; if such a counter-notice is served, the compensation is settled by the arbitration of a single arbitrator⁵.

The Secretary of State or the Welsh Ministers may, if they think fit, withhold compensation, either wholly or partially, in the case of an imported animal which was, in their judgment, diseased at the time of its landing or, before or while being brought from a member state of the European Community, exposed to the infection of disease⁶. Compensation is not payable in respect of any animal intended for export that is slaughtered in an export quarantine station by reason of its having been diseased, suspected of disease, or exposed to infection⁷.

1 Compensation in relation to cattle plague, pleuro-pneumonia and swine fever is provided for by the Animal Health Act 1981 s 31, Sch 3 paras 1(4), 2(3), 4(2). Compensation for foot-and-mouth disease is provided for by Sch 3 para 3(2); see PARA 1062.

As to the power of the Secretary of State or the Welsh Ministers to amend Sch 3, so as to add diseases in respect of which slaughter is governed by that Schedule, and, inter alia, to require the payment of compensation for slaughter, see s 32A; and PARA 1089 note 3. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

In relation to other diseases compensation is provided for by orders made under s 32(3); see the Swine Vesicular Disease (Compensation) Order 1972, SI 1972/2014; the Rabies (Compensation) Order 1976, SI 1976/2195; the Brucellosis and Tuberculosis (England and Wales) Compensation Order 1978, SI 1987/1483 (amended by SI 1981/1412; SI 1996/1352; and SI 1998/2073) (now applicable to Wales only); the African Swine Fever (Compensation) Order 1980, SI 1980/146; the Aujeszky's Disease (Compensation for Swine) Order 1983, SI 1983/345; the Tuberculosis (Deer) Notice of Intended Slaughter and Compensation Order 1989, SI 1989/1316; the Cattle Compensation (England) Order 2006, SI 2006/168; the Bluetongue (Compensation) Order 2007, SI 2007/2996; the Bluetongue (Wales) (Compensation) Order 2007, SI 2007/3010. As to the ascertainment of value of affected animals within the meaning of the Cattle Compensation (England) Order 2006, SI 2006/168, see the Individual Ascertainment of Value (England) Order 2005, SI 2005/3434.

Provision for compensation for slaughter in respect of transmissible spongiform encephalopathies is made by the TSE (England) Regulations 2002, SI 2002/843; the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228 (amended by SI 2007/1998; SI 2008/1180); and the Transmissible Spongiform Encephalopathies (Wales) Regulations 2006, SI 2006/1226 (amended by SI 2007/2244; SI 2008/1182); the Bovine Spongiform Encephalopathy (BSE) Compensation (Wales) Regulations 2006, SI 2006/1512; Sheep and Goats Transmissible Spongiform Encephalopathy (TSE) Compensation (Wales) Regulations 2006, SI 2006/1513; see PARA 1071.

2 Animal Health Act 1981 s 34(3). As to the disposal of carcasses of animals slaughtered at the direction of the Secretary of State or the Welsh Ministers see **PARA 1094**.

3 Animal Health Act 1981 s 34(5). As to income tax in relation to compensation see **INCOME TAXATION** vol 23(1) (Reissue) **PARA 279**.

4 le under the Animal Health Act 1981 s 34(7).

5 Diseases of Animals (Ascertainment of Compensation) Order 1959, SI 1959/1335, art 3(i)-(iii). As to arbitration generally see **ARBITRATION**. An arbitrator may be appointed by agreement between the owner and the Secretary of State: art 3(iv). If no such agreement is reached within 14 days after service of the counter-notice, either party may apply to the President of the Royal Institute of Chartered Surveyors (formerly to the President of the Chartered Auctioneers' and Estate Agents' Institute) to appoint an arbitrator: art 3(v). See further *Bligh v Minister of Agriculture and Fisheries* (1931) 47 TLR 492.

6 Animal Health Act 1981 s 34(6).

7 Animal Health Act 1981 s 12(2). An 'export quarantine station' is a quarantine station provided or approved for the reception, isolation and examination of animals intended for export: s 12(1). See further **PARA 1087**.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) **PARA 733**. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) **PARA 196A**.

1092 Compensation for slaughter

NOTE 1--SI 1972/1980 (as amended) replaced by Swine Vesicular Disease Regulations 2009, SI 2009/1299 (England); Swine Vesicular Disease (Wales) Regulations 2009, SI 2009/1372: see **PARA 1042**. SI 2006/1226, SI 2006/1512, SI 1996/1513 replaced: Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154 (amended by SI 2009/192). See *R (on the application of Partridge Farms Ltd v Secretary of State for the Environment, Food and Rural Affairs* [2009] EWCA Civ 284, [2009] All ER (D) 03 (Apr) (on the method of valuation where the market value of cattle was higher than the amount of compensation payable under SI 2006/168).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(xi) Slaughter of Animals/1093. Seizure of things likely to spread disease.

1093. Seizure of things likely to spread disease.

The Secretary of State or the Welsh Ministers¹ may by order² make such provision for the seizure of anything (except an animal, but including animal products and carcasses) by or by means of which they consider certain diseases³ might be carried or transmitted, and for the destruction, burial, disposal or treatment of anything so seized, as they think expedient for preventing the spread of any such disease⁴.

The Secretary of State or the Welsh Ministers must pay compensation for anything seized under any such order for the purpose of preventing foot-and-mouth disease, and for anything so seized for the purpose of preventing the spread of any other disease, except the carcase of, or anything obtained from or produced by, any animal or bird affected with the disease⁵, although he may by order provide for the payment of compensation for such carcasses or things in respect of diseases other than foot-and-mouth disease or fowl pest⁶. Compensation is based on the value of the thing at the time of the seizure⁷. Where anything destroyed, buried or disposed of under an order made for the regulation thereof in respect of infected places or areas⁸ could have been seized under the present provisions, the compensation is payable as if it had been so seized at the time of the destruction, burial or disposal⁹. The Secretary of State or the Welsh Ministers may make such orders as they think fit for prescribing how the value of anything seized is to be ascertained, for arranging the method of payment, and for regulating the destruction, burial or disposal of anything seized¹⁰.

The Secretary of State or the Welsh Ministers may make such orders¹¹ as he thinks or they think fit for prescribing and regulating the seizure, detention and disposal of a diseased or suspected animal exposed, carried, kept or otherwise dealt with in contravention of an order of the Secretary of State or the Welsh Ministers; and for prescribing and regulating the liability of the owner or consignor or consignee of such animal for the expenses connected with its seizure, detention and disposal¹².

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 See the Diseases of Animals (Seizure) Order 1993, SI 1993/1685. See also the Poultry (Seizure of Hatching Eggs) Order 1990, SI 1990/232; the Specified Animal Pathogens Order 2008, SI 2008/944; the Diseases of Poultry (England) Order 2003, SI 2003/1078 (amended by SI 2006/1197, so as not to apply to avian influenza); the Diseases of Poultry (Wales) Order 2003, SI 2003/1079 (amended by SI 2006/1762, so as not to apply to avian influenza); the Transmissible Spongiform Encephalopathies (No 2) Regulations 2006, SI 2006/1228 (amended by SI 2007/1998; SI 2008/1180); the Transmissible Spongiform Encephalopathies (Wales) Regulations 2006, SI 2006/1226 (amended by SI 2007/2244; SI 2008/1182). See also the Avian Influenza and Influenza of Avian Origin in Mammals (England) (No 2) Order 2006, SI 2006/2702; the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006, SI 2006/2927; the Avian Influenza (H5N1 in Poultry) (England) Order 2006, SI 2006/3247 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006, SI 2006/3309 (amended by SI 2007/3375); the Avian Influenza (H5N1 in Wild Birds) (England) Order 2006, SI 2006/3249 (amended by SI 2007/3303); and the Avian Influenza (H5N1 in Wild Birds) (Wales) Order 2006, SI 2006/3310 (amended by SI 2007/3375).

3 These powers are exercisable in relation to cattle plague, pleuro-pneumonia, foot-and-mouth disease, swine-fever and transmissible spongiform encephalopathies, and any disease to which the Animal Health Act 1981 s 32 for the time being applies (see PARA 1089) and any disease in respect of which an order under s 32A is in force (see PARA 1089 note 3); and any disease as defined in relation to poultry by or under s 88 (see PARA 1103); s 35(2) (amended by the Animal Health Act 2002 s 2(2)).

4 Animal Health Act 1981 s 35(1), (1A) (s 35(1) amended, and s 35(1A) added, by the Animal Health and Welfare Act 1984 s 1). Orders may be made prescribing and regulating the destruction, burial or disposal of anything seized under these provisions: Animal Health Act 1981 s 35(3)(b).

5 Animal Health Act 1981 s 36(1) (s 36(1), (2) amended by the Animal Health and Welfare Act 1984 s 1(3)). See also *R (on the application of Dixon) v Secretary of State for the Environment, Food and Rural Affairs* [2002] EWHC 831 (Admin), (2002) Times, 22 April.

6 Animal Health Act 1981 s 36(2) (as amended: see note 5). See the Diseases of Animals (Seizure) Order 1993, SI 1993/1685.

7 Animal Health Act 1981 s 36(3). As to income tax in relation to compensation see **INCOME TAXATION** vol 23(2) (Reissue) PARA 279.

8 See an order made under the Animal Health Act 1981 s 23(e). See generally PARA 1072 et seq.

9 Animal Health Act 1981 s 36(4).

10 Animal Health Act 1981 s 36(5). See eg the Poultry (Seizure of Hatching Eggs) Order 1990, SI 1990/232.

11 See the Cattle Plague Order of 1928, SR & O 1928/206 (amended by SR & O 1938/194; SI 1977/944); the Importation of Animals Order 1977, SI 1977/944 (amended by SI 1990/2371; SI 1992/1361; SI 1992/3159; SI 1995/2922; SI 1996/1760; SI 2000/1618; SI 2000/1673; SI 2001/2662); the Importation of Birds, Poultry and Hatching Eggs Order 1979, SI 1979/1702 (amended by SI 1990/2371; SI 1996/3124; SI 2000/1673); the Warble Fly (England and Wales) Order 1982, SI 1982/234 (amended by SI 1985/328; SI 1987/1601; SI 1989/244; SI 1994/3142; and SI 2006/2407); the Infectious Diseases of Horses Order 1987, SI 1987/790 (amended by SI 1992/3159; SI 1995/2922); the Sheep Scab Order 1997, SI 1997/968; the Brucellosis (England) Order 2000, SI 2000/2055 (amended by SI 2008/618); and the Enzootic Bovine Leukosis (England) Order 2000, SI 2000/2056; the Enzootic Bovine Leukosis (Wales) Order 2006, SI 2006/867; the Brucellosis (Wales) Order 2006, SI 2006/866; the Avian Influenza and Influenza of Avian Origin in Mammals (England) (No 2) Order 2006, SI 2006/2702; and the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006, SI 2006/2927.

12 Animal Health Act 1981 s 28.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1093 Seizure of things likely to spread disease

NOTES 2, 11--SI 2006/2702 amended: see PARA 868.

NOTE 2--SI 2003/1078 further amended: see PARA 1052. SI 2006/1228, SI 2006/1226 replaced by Transmissible Spongiform Encephalopathies (England) Regulations 2008, SI 2008/1881; Transmissible Spongiform Encephalopathies (Wales) Regulations 2008, SI 2008/3154: see PARA 1071. SI 2008/944 amended: see PARA 1042.

NOTE 11--SI 1977/944 further amended: see PARA 868. SI 1987/790 further amended: see PARA 1041. SI 2000/2055, SI 2000/2056 amended: see PARA 1043.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(xi) Slaughter of Animals/1094. Disposal of carcasses.

1094. Disposal of carcasses.

When an animal has been slaughtered at the direction of the Secretary of State or the Welsh Ministers¹, the carcase² belongs to him or them and must be disposed of by him or them or as he directs or they direct, as the condition of the animal or carcase and other circumstances require or admit³. The Secretary of State or the Welsh Ministers may use for the burial of the carcase any suitable land in the possession or occupation of the animal's owner or any common or uninclosed land⁴. The Secretary of State or the Welsh Ministers may make orders⁵ regulating the destruction, burial, disposal or treatment of the carcasses of animals slaughtered at his direction⁶, or of animals dying while diseased or suspected⁷.

A person is guilty of an offence against the Animal Health Act 1981 who, without lawful authority or excuse⁸, (1) throws or places, or causes or suffers to be thrown or placed, into any river, stream, canal, navigation, or other water, or into the sea within 4.8 kilometres of the shore, the carcase of an animal which has died of disease, or been slaughtered as diseased or suspected⁹; or (2) digs up, or causes to be dug up, a carcase buried under the direction of the Secretary of State or the Welsh Ministers or of a local authority or of a receiver of wreck¹⁰.

It is unlawful for any person, except under a licence from the Secretary of State or the Welsh Ministers, to dig up, or cause to be dug up, the buried carcase of any animal¹¹.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 As to the meaning of 'carcase' see PARA 1072 note 11.

3 Animal Health Act 1981 s 34(2). As to the seizure of carcasses see PARA 1093. A carcase can be disposed of by burning: *R (on the application of Dixon) v Secretary of State for the Environment, Food and Rural Affairs* [2002] EWHC 831 (Admin), (2002) Times, 22 April. However, see now EC Parliament and Council Regulation 1774/2002 (OJ L273, 10.10.2002, p 1) laying down health rules concerning animal by-products not intended for human consumption, which prescribes the methods of disposal of carcasses. See the Animal By-Products Regulations 2005, SI 2005/2347, and the Animal By-Products (Wales) Regulations 2003, SI 2003/2756, which make provision for the enforcement of Regulation 1774/2002.

4 Animal Health Act 1981 s 34(4). As to uninclosed land see PARA 1075 note 3.

5 See the Brucellosis (England) Order 2000, SI 2000/2055 (amended by SI 2008/618); the Enzootic Bovine Leukosis Order 2000, SI 2000/2056; the Classical Swine Fever (England) Order 2003, SI 2003/2329; the Classical Swine Fever (Wales) Order 2003, SI 2003/2456; the Enzootic Bovine Leukosis (Wales) Order 2006, SI 2006/867; the Brucellosis (Wales) Order 2006, SI 2006/866; the Avian Influenza and Influenza of Avian Origin in Mammals (England) (No 2) Order 2006, SI 2006/2702; the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006, SI 2006/2927; the Avian Influenza (H5N1 in Poultry) (England) Order 2006, SI 2006/3247 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006, SI 2006/3309 (amended by SI 2007/3375); the Avian Influenza (H5N1 in Wild Birds) (England) Order 2006, SI 2006/3249 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Wild Birds) (Wales) Order 2006, SI 2006/3310 (amended by SI 2007/3375); the Bluetongue (No 2) Order 2007, SI 2007/3304 (amended by SI 2008/962); and the Bluetongue (No 2) (Wales) Order 2007, SI 2007/3309 (amended by SI 2008/1090).

6 Animal Health Act 1981 s 34(7).

7 Animal Health Act 1981 s 35(3)(a). See the orders cited in note 5. As to rabies see PARA 1057.

8 Proof of lawful authority or excuse lies on the accused: Animal Health Act 1981 s 35(4).

9 Animal Health Act 1981 s 35(4)(a).

10 Animal Health Act 1981 s 35(4)(b).

11 See the Animal Health Act 1981 s 35(3)(c); and the Animals (Miscellaneous Provisions) Order of 1927, SR & O 1927/290, art 16. As to the meaning of 'animal' in this context see PARA 1050 note 1.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1094 Disposal of carcasses

NOTE 3--Regulation 1774/2002 replaced with effect from 4 March 2011: European Parliament and EC Council Regulation 1069/2009 (OJ L300, 14.11.2009, p 1). SI 2005/2347 amended: see PARA 1041.

NOTE 5--SI 2000/2055, SI 2000/2056 amended: see PARA 1043. SI 2003/2329 amended: see PARA 1049. SI 2006/2702 amended: see PARA 868.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(xii) Enforcement and Offences/1095. Functions of police.

(xii) Enforcement and Offences

1095. Functions of police.

It is the duty of the police force of each police area to execute and enforce the Animal Health Act 1981 and orders made by the Secretary of State or the Welsh Ministers under that Act¹. A constable² may, without warrant, stop and detain a person who is seen or found committing, or is reasonably suspected of being engaged in committing, an offence against the Act³. In addition the constable may stop, detain and examine any animal, vehicle, boat or thing to which the suspected offence relates, and require it to be taken back to any place from which it was unlawfully removed⁴.

In any case in which a constable stops any person, animal, vehicle, boat or other thing the constable must make a written report to his superior officer, including an account of his proceedings in consequence⁵.

Additional powers are conferred on constables in relation to the prevention of the introduction or spread of rabies in Great Britain⁶.

1 Animal Health Act 1981 s 60(1) (amended by the Environmental Protection Act 1990 s 151(3)). As to police forces and police areas see **POLICE** vol 36(1) (2007 Reissue) PARA 136 et seq. The Animal Health Act 1981 s 60 is repealed, in so far as it confers a power of arrest without warrant upon a constable or persons in general, by the Serious Organised Crime and Police Act 2005 s 111, Sch 7 Pt 2 para 38). As to powers of arrest without warrant generally, see now the Police and Criminal Evidence Act 1984 s 24.

2 These provisions extend to a person called by a constable to his assistance: Animal Health Act 1981 s 60(8). As to the exercise of constables' powers by inspectors see PARA 1096.

3 Animal Health Act 1981 s 60(2). There is no specific power of arrest under the Act. As to police powers of arrest generally see **POLICE** vol 36(1) (2007 Reissue) PARA 482.

4 Animal Health Act 1981 s 60(4) (amended by the Police and Criminal Evidence Act 1984 s 119, Sch 7). As to the meaning of 'vessel' see PARA 868 note 3.

5 Animal Health Act 1981 s 60(9).

6 See PARA 1058.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(xii) Enforcement and Offences/1096. Functions and general powers of inspectors.

1096. Functions and general powers of inspectors.

Inspectors¹ appointed by local authorities² and the veterinary³ or other inspectors appointed by the Secretary of State or the Welsh Ministers are entrusted with various functions under the Animal Health Act 1981 and orders made under the Act. The powers conferred upon a local authority inspector are normally exercisable only in relation to the district for which he is appointed⁴, whereas a Department inspector has all the powers of an inspector throughout England and Wales or that part for which he is appointed⁵, and where an order gives any power to a local authority inspector, that power may be exercised by the Department inspector⁶. Both Department and local authority inspectors have, for the purposes of the Act, certain of the powers of constables⁷. Additionally, they may enter any land or shed to which the Act applies, any building or place where they have reasonable grounds for supposing that disease exists or has within 56 days existed, that the carcase of a diseased animal has been kept or disposed of, that there is to be found any pen, place, vehicle or thing in respect of which there has been non-compliance with the Act or an order or local authority regulation, or that the Act or an order or regulation has not been complied with⁸, and any pen, vehicle, vessel, boat or aircraft in which or in respect of which they have reasonable grounds for supposing that the Act or an order or regulation has not been complied with⁹. An inspector must, if required by the owner or occupier, state in writing his reasons for entering¹⁰.

An inspector may also enter vessels, boats, aircraft or other vehicles that are within port limits or within an airport, or vessels, boats or aircraft that he reasonably supposes have been recently brought into Great Britain, in order to ascertain whether any order made to prevent disease being introduced into Great Britain through the importation of animals, carcasses, eggs or other things¹¹, or a licence issued under such an order, is being complied with¹². He may enter land, buildings or other places, and vessels, boats, aircraft or other vehicles (wherever they may be) when he reasonably supposes an animal or other thing whose importation is prohibited or regulated by such an order is or has been kept there¹³.

A Department inspector who is satisfied that the Act, an order of the Secretary of State or the Welsh Ministers, or a local authority regulation is not being complied with or has not been complied with on board a vessel in port may so state in writing, whereupon the vessel may be detained until the Secretary of State or the Welsh Ministers direct otherwise¹⁴.

An inspector who is accompanied by a constable in uniform may stop, detain and inspect any vehicle¹⁵ which is in a designated¹⁶ area in a designated period to ascertain whether the provisions of the Animal Health Act 1981, any order made under the Act, or any local authority regulation made under the Act is being complied with¹⁷.

An inspector may at all reasonable hours enter any land, building, or other place, or any vessel, boat, aircraft, hovercraft or vehicle of any other description, for the purpose of ascertaining whether the provisions of any order made under the Animal Health Act 1981 in implementation of any Community obligation have been or are being complied with, and may carry out such inspections (including inspection of documents) as may be necessary for that purpose¹⁸.

The certificate of a Department veterinary inspector is conclusive evidence in all courts that an animal is or was affected with a disease specified therein¹⁹.

Local authority inspectors are directly responsible to the Secretary of State or the Welsh Ministers for sending and giving such notices, reports, returns and information as they require²⁰.

If inspectors act negligently in executing the Secretary of State's or the Welsh Ministers' orders the local authority is not answerable²¹.

A person is guilty of an offence against the Animal Health Act 1981 who, without lawful authority or excuse²²:

- 273 (1) refuses to an inspector or other officer, acting in execution of the Act, or of an order of the Secretary of State or the Welsh Ministers, or of a regulation of a local authority, admission to any land, building, place, pen, vessel, boat, aircraft or vehicle of any other description which the inspector or officer is entitled to enter or examine²³; or
- 274 (2) obstructs or impedes him in so entering or examining²⁴; or
- 275 (3) otherwise in any respect obstructs or impedes an inspector or constable or other officer in the execution of his duty, or assists in any such obstructing or impeding²⁵.

1 'Inspector' means a person appointed to be an inspector for the purposes of the Animal Health Act 1981 by the Secretary of State or the Welsh Ministers or by a local authority and, when used in relation to an officer of the Secretary of State or the Welsh Ministers, includes a veterinary inspector: s 89(1). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

For convenience, inspectors holding their appointment under the Secretary of State, who were formerly referred to as 'Ministry inspectors' or 'Ministry veterinary inspectors' are referred to in this title as 'Department inspectors' or 'Department veterinary inspectors'.

2 As to the appointment of local authority inspectors see PARA 1122.

3 As to the appointment of inspectors generally see PARA 1120.

4 See the Animal Health Act 1981 s 51.

5 Animal Health Act 1981 s 63(8). Further, a Department inspector may (except in relation to poultry) at any time enter any land, building or other place, on or in which he has reasonable grounds for supposing that animals are or have been kept, for the purpose of ascertaining whether any disease exists there or has within 56 days existed there: s 63(9) (amended by the Animal Health and Welfare Act 1984 s 16(1), Sch 1 para 4).

6 Animals (Miscellaneous Provisions) Order of 1927, SR & O 1927/290, art 3.

7 They have the powers outlined in PARA 1095 text and note 3; but not certain powers which relate to rabies (described in PARA 1058): Animal Health Act 1981 s 63(1).

8 Animal Health Act 1981 s 63(2).

9 Animal Health Act 1981 s 63(3) (amended by the Animal Health and Welfare Act 1984 Sch 1 para 4). For the power to enter premises to examine sheep see PARA 1053. As to the meaning of 'vessel' see PARA 868 note 3.

10 Animal Health Act 1981 s 63(4).

11 Ie an order made under the Animal Health Act 1981 s 10; see PARA 1081.

12 Animal Health Act 1981 s 63(5). See also note 9.

13 Animal Health Act 1981 s 63(6). See also note 9.

14 Animal Health Act 1981 s 65(1). A copy of the inspector's representations must be delivered to the master of the vessel: s 65(2). By virtue of s 65(4) (s 65(3), (4) amended by the Merchant Shipping Act 1995 s 314, Sch 13 para 58), this power may be extended by order to aircraft. At the date at which this volume states the law, no such order had been made. See also the Animal Health Act 1981 s 65(3) (as so amended); the Merchant Shipping Act 1995 s 284; and **SHIPPING AND MARITIME LAW**.

15 'Vehicle' includes (1) a trailer, semi-trailer or other thing which is designed or adapted to be towed by another vehicle; (2) anything on a vehicle; (3) a detachable part of a vehicle; (4) a container or other structure

designed or adapted to be carried by or on a vehicle: Animal Health Act 1981 s 65A(4) (s 65A added by the Animal Health Act 2002 s 10).

16 'Designated' means designated by an order made by the Secretary of State or the Welsh Ministers: Animal Health Act 1981 s 65A(3) (as added: see note 15). For orders made partially under this provision see the Avian Influenza and Influenza of Avian Origin in Mammals (England) (No 2) Order 2006, SI 2006/2702; the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006, SI 2006/2927; the Avian Influenza (H5N1 in Poultry) (England) Order 2006, SI 2006/3247 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006, SI 2006/3309 (amended by SI 2007/3375); the Avian Influenza (H5N1 in Wild Birds) (England) Order 2006, SI 2006/3249 (amended by SI 2007/3303); and the Avian Influenza (H5N1 in Wild Birds) (Wales) Order 2006, SI 2006/3310 (amended by SI 2007/3375).

17 Animal Health Act 1981 s 65A(1), (2) (as added: see note 15).

18 Animal Health Act 1981 s 64A (added by SI 1992/3293). If required, the inspector must produce some duly authenticated document showing his authority: Animal Health Act 1981 s 64A (as so added).

19 See the Animal Health Act 1981 s 63(7). See also *Harris v Smith* (1879) 44 JP 361; *Jameson v Dow* (1898) 2 F 24, Ct of Sess; *Henderson v Wardrope* 1932 JC 18.

20 Animal Health Act 1981 s 81.

21 See *Stanbury v Exeter Corp* [1905] 2 KB 838. See also *Ministry of Housing and Local Government v Sharp* [1970] 2 QB 223, [1970] 1 All ER 1009, CA.

22 Proof of lawful authority or excuse lies on the accused: Animal Health Act 1981 s 66. As to the penalties for offences against the Act see PARA 1101.

23 Animal Health Act 1981 s 66(a).

24 Animal Health Act 1981 s 66(b).

25 Animal Health Act 1981 s 66(c).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1096 Functions and general powers of inspectors

NOTE 16--SI 2006/2702 amended: see PARA 868.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(xii) Enforcement and Offences/1097. Tests and samples: power of entry.

1097. Tests and samples: power of entry.

The provisions concerning the powers of entry to premises in relation to the presence of foot-and-mouth disease¹ apply also to any disease specified by order made by the Secretary of State or the Welsh Ministers².

¹ ie the Animal Health Act 1981 ss 62D-62F; see PARA 1065.

² Animal Health Act 1981 s 62D(2) (s 62D added by the Animal Health Act 2002 s 9). As respects England, no such order may be made unless a draft has been laid before Parliament and approved by a resolution of each House: Animal Health Act 1981 s 62D(3) (as so added). As to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. For such an order see the Avian Influenza and Newcastle Disease (England and Wales) Regulations 2003, SI 2003/1734.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(xii) Enforcement and Offences/1098. Offences, proceedings and penalties: general.

1098. Offences, proceedings and penalties: general.

Landing, shipping or bringing through the Channel Tunnel an animal or thing, or attempting to do so, in contravention of the Animal Health Act 1981 or an order of the Secretary of State or the Welsh Ministers¹ renders a person liable under the customs and excise Acts² to the penalties imposed on persons importing or exporting or attempting to import or export prohibited goods; and this is without prejudice to any proceedings under the Animal Health Act 1981³. Goods improperly imported are liable to forfeiture⁴. Importing, unshipping or landing an animal with intent to evade the statutory restrictions is an offence⁵, as is exporting animals which constitute prohibited goods⁶.

An offence against the Animal Health Act 1981 which is declared to be such by an order expressed to be made for the purpose of preventing the introduction of rabies into Great Britain⁷ may be tried either summarily or on indictment⁸. So too may offences of contravening, or failing to comply with, any such order, or failing to observe a condition of a licence issued under such an order, when the order declares that the offence is so triable⁹. A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum¹⁰, and on conviction on indictment to a fine or to imprisonment for up to 12 months, or to both¹¹.

Other offences under the Act, discussed in the following paragraphs, are summary offences¹². Any person aggrieved by the decision of a magistrates' court under the Act may appeal to the Crown Court¹³.

The right to lay informations for offences under the Animal Health Act 1981 is not restricted to local authorities; prosecutions may be instituted by a private prosecutor¹⁴.

In any proceedings under the Animal Health Act 1981 no proof is required of the appointment or handwriting of an inspector or officer of the Secretary of State or of the Welsh Ministers, or of the clerk, inspector or other officer of a local authority¹⁵. Where a person is charged with an offence against the Act in relation to a disease, he is presumed to have had knowledge of the existence of the disease unless he shows that he did not have such knowledge, and could not with reasonable diligence have obtained it¹⁶.

An information relating to an offence under the Animal Health Act 1981 which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time within three years starting with the date of the commission of the offence, and within the period of six months starting with the day on which evidence which the prosecutor thinks is sufficient to justify the proceedings came to his knowledge¹⁷.

Any money made recoverable summarily by the Animal Health Act 1981 or an order of the Secretary of State or the Welsh Ministers may be so recovered as a civil debt, and in England and Wales this must be in accordance with the Magistrates' Courts Act 1980¹⁸.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 As to the 'customs and excise Acts' see the Customs and Excise Management Act 1979 s 1(1) (definition applied by the Animal Health Act 1981 s 89(1)).

3 Animal Health Act 1981 s 74 (amended by SI 1990/2371). For the provisions prohibiting or regulating the importation or exportation of animals see PARA 1081 et seq. As to the meaning of 'vessel' see PARA 868 note 3.

4 See the Customs and Excise Management Act 1979 s 49 (modified as respects the Channel Tunnel by SI 1990/2167); and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 993.

5 See the Customs and Excise Management Act 1979 s 50; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 994.

6 See the Customs and Excise Management Act 1979 s 68; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1029.

7 See an order made under the Animal Health Act 1981 s 10. See the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, SI 1974/2211; and PARA 1054. As to the meaning of 'Great Britain' see PARA 830 note 21.

8 Animal Health Act 1981 s 76(1).

9 Animal Health Act 1981 s 76(3).

10 As to the statutory maximum see PARA 877 note 6.

11 Animal Health Act 1981 s 76(2).

12 See PARAS 1100-1101. Every offence against the Act is deemed to have been committed, and every cause of complaint or matter for summary proceeding under the Act, order or regulation, is deemed to have arisen either where it actually was committed or arose, or where the defendant happens to be at the time of the institution of the charge, complaint or proceeding: Animal Health Act 1981 s 79(4).

13 Animal Health Act 1981 s 78.

14 *R v Stewart* [1896] 1 QB 300; cf *Tranton v Astor* (1917) 33 TLR 383.

15 Animal Health Act 1981 s 79(1).

16 Animal Health Act 1981 s 79(2). As to the raising of a presumption in cases relating to cleansing and disinfection see s 79(3); and PARA 1052.

17 Animal Health Act 1981 s 71A(1) (s 71A added by the Animal Health Act 2002 s 14). This is despite anything in the Magistrates' Courts Act 1980 s 127(1) (see **MAGISTRATES**): Animal Health Act 1981 s 71A(1) (as so added). A certificate by the prosecutor as to the date on which such evidence came to his knowledge is conclusive evidence of that fact: s 71A(2) (as so added).

18 Animal Health Act 1981 s 77.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or endorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(xii) Enforcement and Offences/1099. Offences as to licences.

1099. Offences as to licences.

A person is guilty of an offence against the Animal Health Act 1981¹ if he:

- 276 (1) acts without a licence or with an expired licence, where a licence is required, with intent to evade the Act or an order of the Secretary of State or the Welsh Ministers or a regulation of a local authority²;
- 277 (2) uses, offers or attempts to use an incomplete or false licence³;
- 278 (3) makes a declaration or statement false in a material particular for the purpose of obtaining a licence, certificate or instrument, or obtains or endeavours to obtain one by false pretences⁴; or
- 279 (4) grants or issues a licence false in a material particular⁵,

unless he shows to the court's satisfaction that he did not know of the incompleteness, untruth or falsity, and could not with reasonable diligence have known of it⁶.

A person is guilty of an offence against the Act if he (a) grants or issues a document either knowing that he has no authority to do so⁷, or in blank⁸; or (b) uses or offers or attempts to use a blank instrument⁹.

1 As to the penalties for offences against the Animal Health Act 1981 see PARA 1101.

2 Animal Health Act 1981 s 71(a), (b).

3 Animal Health Act 1981 s 71(c).

4 Animal Health Act 1981 s 69.

5 Animal Health Act 1981 s 67(a).

6 Animal Health Act 1981 ss 67(a), 69, 71(c). As to the meaning of 'false in a material particular' see PARA 1086 note 7. As to false pretences see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 320.

7 See the Animal Health Act 1981 s 67(b).

8 Animal Health Act 1981 s 68(a).

9 Animal Health Act 1981 s 68(b). However, it is not an offence if he shows to the court's satisfaction that he did not know it was issued in blank and could not with reasonable diligence have known: s 68(b).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue)
PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(xii) Enforcement and Offences/1100. General offences against the Animal Health Act 1981.

1100. General offences against the Animal Health Act 1981.

A person is guilty of an offence against the Animal Health Act 1981 if, without lawful authority or excuse¹, he:

- 280 (1) does anything contravening the Act, an order of the Secretary of State or the Welsh Ministers, or a local authority regulation²;
- 281 (2) fails to give, produce, observe or do any notice, licence, rule or thing as required by the Act or by an order or regulation³;
- 282 (3) does anything which the Act or an order makes or declares to be not lawful⁴;
or
- 283 (4) does or omits anything the doing or omission of which is declared by the Act or an order to be an offence by him against the Act⁵.

1 Proof of lawful authority or excuse lies on the accused: Animal Health Act 1981 ss 72, 73.

2 Animal Health Act 1981 s 73(a).

3 Animal Health Act 1981 s 73(b).

4 Animal Health Act 1981 s 72(b).

5 Animal Health Act 1981 s 72(a).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(2) ERADICATION AND PREVENTION OF DISEASE/(xii) Enforcement and Offences/1101. Penalties for offences.

1101. Penalties for offences.

Save where a penalty is otherwise expressly provided (and in addition to any applicable customs and excise penalties¹), a person guilty of an offence against the Animal Health Act 1981 is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both².

¹ See PARA 1098.

² Animal Health Act 1981 s 75(1), (2) (substituted by the Animal Health Act 2002 s 13). As to the standard scale see PARA 738 note 1.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(3) POULTRY/1102. Application of Animal Health Act 1981 to poultry.

(3) POULTRY

1102. Application of Animal Health Act 1981 to poultry.

Subject to the provisions referred to in the following paragraphs the Animal Health Act 1981 has effect in relation to poultry¹ as it has effect in relation to animals².

1 As to the meaning of 'poultry' see PARA 1103.

2 Animal Health Act 1981 s 87(4). This is subject to ss 15(5), 32(4), 63(9) (see PARAS 1106, 1108, 1110): s 87(4) (amended by the Animal Health and Welfare Act 1984 s 2(2)).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(3) POULTRY/1103. Meaning of 'poultry' and 'disease'.

1103. Meaning of 'poultry' and 'disease'.

'Poultry' in the Animal Health Act 1981 means domestic fowls, turkeys, geese, ducks, guinea-fowls, pigeons, pheasants and partridges¹, but the Secretary of State or the Welsh Ministers² may by order extend the definition³ to include, for any purpose of the Animal Health Act 1981, any other species of bird, or restrict it to exclude pheasants or partridges⁴.

In the application of the Act to poultry, 'disease' means fowl pest in any of its forms (including Newcastle disease and fowl plague), fowl cholera, infectious bronchitis, infectious laryngotracheitis, pullorum disease, fowl typhoid, fowl pox and fowl paralysis⁵; but the Secretary of State or the Welsh Ministers may by order extend the definition⁶ to include other bird diseases or restrict it so as to exclude any of the foregoing diseases except fowl pest in any of its forms⁷.

1 Animal Health Act 1981 s 87(4).

2 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

3 The definition has been extended by the following orders: Diseases of Animals (Extension of Definition of Poultry) Order 1953, SI 1953/37; the Importation of Birds, Poultry and Hatching Eggs Order 1979, SI 1979/1702 (amended by SI 1990/2371; SI 1996/3124; SI 2000/1673); the Importation of Embryos, Ova and Semen Order 1980, SI 1980/12 (amended by SI 1984/1326; SI 1990/2371; SI 1994/2920; SI 1996/3124; SI 2000/1673); the Importation of Animal Products and Poultry Products Order 1980, SI 1980/14 (amended by SI 1982/948; SI 1990/2371; SI 1994/2920; SI 1994/3142; SI 1994/3144; SI 1996/3124; SI 1996/3125; SI 1997/322; and SI 2002/1227); the Importation of Animal Pathogens Order 1980, SI 1980/1212 (amended by SI 2006/2407); the Zoonoses Order 1989, SI 1989/285; the Welfare of Animals at Markets Order 1990, SI 1990/2628 (amended by SI 1993/3085; SI 1995/12); the Anthrax Order 1991, SI 1991/2814 (amended by SI 1995/2922; SI 1996/1855); the Specified Diseases (Notification) Order 1996, SI 1996/2628 (amended by SI 1998/1645; SI 2006/2166; and SI 2006/2237); the Specified Animal Pathogens Order 2008, SI 2008/944; the Movement of Animals (Restrictions) (England) Order 2002, SI 2002/3229; the Movement of Animals (Restrictions) (Wales) Order 2003, SI 2003/399; the Diseases of Poultry (England) Order 2003, SI 2003/1078 (amended by SI 2006/1197, so as not to apply to avian influenza); the Diseases of Poultry (Wales) Order 2003, SI 2003/1079 (amended by SI 2006/1762, so as not to apply to avian influenza); the Transport of Animals (Cleansing and Disinfection) (England) (No 3) Order 2003, SI 2003/1724 (amended by SI 2006/3260, SI 2007/1020); the Transport of Animals (Cleansing and Disinfection) (Wales) (No 3) Order 2003, SI 2003/1968 (amended by SI 2008/789); the Animal By-Products Regulations 2005, SI 2005/2347 (England); the Animal By-Products (Wales) Regulations 2003, SI 2003/2756; the Foot-and-Mouth Disease (England) Order 2006, SI 2006/182; the Foot-and-Mouth Disease (Wales) Order 2006, SI 2006/179; the Avian Influenza and Influenza of Avian Origin in Mammals (England) (No 2) Order 2006, SI 2006/2702; the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006, SI 2006/2927; the Welfare of Animals (Transport) (England) Order 2006, SI 2006/3260; and the Welfare of Animals (Transport) (Wales) Order 2007, SI 2007/1047.

4 Animal Health Act 1981 s 87(5).

5 Animal Health Act 1981 s 88(3).

6 The definition has been extended by the following orders: the Psittacosis or Ornithosis Order 1953, SI 1953/38; the Importation of Birds, Poultry and Hatching Eggs Order 1979, SI 1979/1702; the Importation of Animal Products and Poultry Products Order 1980, SI 1980/14 (as amended: see note 3); the Specified Diseases (Notification) Order 1996, SI 1996/2628; the Specified Animal Pathogens Order 2008, SI 2008/944; the Movement of Animals (Restrictions) (England) Order 2002, SI 2002/3229; the Movement of Animals (Restrictions) (Wales) Order 2003, SI 2003/399; the Diseases of Poultry (England) Order 2003, SI 2003/1078 (amended by SI 2006/1197, so as not to apply to avian influenza); the Diseases of Poultry (Wales) Order 2003, SI 2003/1079 (amended by SI 2006/1762, so as not to apply to avian influenza); the Transport of Animals (Cleansing and Disinfection) (England) (No 3) Order 2003, SI 2003/1724 (amended by SI 2006/3260, SI 2007/1020); and the Transport of Animals (Cleansing and Disinfection) (Wales) (No 3) Order 2003, SI 2003/1968 (amended by SI 2008/789).

7 Animal Health Act 1981 s 88(4).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1103 Meaning of 'poultry' and 'disease'

NOTE 3--SI 1991/2814, SI 2005/2347, SI 1996/2628 amended: see PARA 1041. SI 2003/1078 further amended: see PARA 1052. SI 2006/182, SI 2006/2702 amended: see PARA 868.

NOTES 3, 6--SI 2003/399 amended: see PARA 1041. SI 2008/944 amended: see PARA 1042.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(3) POULTRY/1104. Eradication and control of disease.

1104. Eradication and control of disease.

Subject to Treasury approval, the Secretary of State and the Welsh Ministers¹ have identical powers in relation to expending money as they think fit upon the eradication of poultry diseases as they have in relation to diseases of other animals². The provisions relating to the control of zoonoses³ apply to poultry as they apply to other animals⁴.

- 1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.
- 2 Animal Health Act 1981 s 3(1). See PARA 1043.
- 3 See PARA 1044. As to the meaning of 'zoonoses' see PARA 1044 note 2.
- 4 Animal Health Act 1981 s 87(4). As to the testing of poultry flocks for salmonella see PARA 1111.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(3) POULTRY/1105. Avian influenza.

1105. Avian influenza.

Provision has been made by regulations under the European Communities Act 1972¹ to reduce and manage the risk of transmission of avian influenza² from wild birds to poultry³ or other captive birds⁴ in England. In particular, the regulations prohibit any person from arranging an unlicensed fair, market, show, exhibition or other gathering of poultry or other captive birds, and from bringing such birds to a bird gathering which he knows or suspects is unlicensed⁵. Keepers⁶ of 50 or more poultry on any one premises⁷ are required to notify the Secretary of State of specified information relating to such poultry and of specified changes to this information⁸. Generally, no person may vaccinate⁹ any zoo bird¹⁰ unless he is required or licensed to do so by the Secretary of State¹¹, but the Secretary of State may vaccinate zoo birds if he considers it necessary, require their vaccination or license their vaccination¹². Restrictions are imposed on the movement of vaccinated zoo birds¹³, and the Secretary of State is required to ensure that such surveillance for avian influenza as he considers necessary to limit the spread of avian influenza is carried out at any zoo where birds have been vaccinated¹⁴. Any person who knows or suspects that any bird has not been vaccinated as required by the Secretary of State must immediately notify the Divisional Veterinary Manager appointed by the Secretary of State for the area in which that bird is located¹⁵.

Obligations are imposed on keepers of birds and other persons to provide assistance and information to a person performing a function under the regulations¹⁶, not to deface, obscure or remove any mark applied by an inspector¹⁷, not to provide false or misleading information¹⁸, and to produce records to a person performing a function under the regulations¹⁹.

Requirements as to the welfare of poultry or other captive birds apply on the change of occupation of premises under restriction²⁰. Provisions in the regulations which prohibit or restrict the movement or use of any thing do not apply, in their performance of any function under the regulations, to the Secretary of State, an inspector or any other person authorised by the Secretary of State or by the local authority²¹ to perform a function under the regulations²².

An inspector performing a function under the regulations may (1) mark any bird or other thing for identification purposes; and (2) require, by notice, the person in charge of any vehicle²³ or equipment to cleanse and disinfect it²⁴. A veterinary inspector or an inspector acting under his direction may, when performing his functions under the regulations (a) cleanse and disinfect any part of premises or any thing on those premises; (b) require, by notice, the occupier of any premises to cleanse and disinfect any part of those premises or any thing on those premises; (c) require, by notice, the occupier of any premises or the keeper of any poultry or other captive bird (i) to keep or isolate any poultry, other captive bird or animal in a specified place; (ii) to separate any poultry, other captive bird or animal from any other animal or bird²⁵. If any person fails to comply with a requirement in or under the regulations, an inspector may take such steps he considers necessary to ensure the requirement is met, at the expense of that person²⁶. Provision is made as to offences²⁷ and enforcement²⁸.

Separate provision is made to control the vaccination of poultry and other captive birds²⁹. In particular, vaccination is prohibited except where required or licensed by the Secretary of State, in zones declared 'vaccination zones'³⁰.

1 See the Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, which give effect to EC Commission Decision 2005/734 (OJ L274, 20.10.2005, p 105) art 2a(2) and EC Commission Decision 2006/474 (OJ L187, 8.7.2006, p 37) and implement provisions requiring or dependent on the identification of poultry premises under EC Council Directive 2005/94 (OJ L10, 14.1.2006, p 16). Equivalent provision has been

made in relation to Wales by the Avian Influenza (Preventive Measures) (Wales) Regulations 2006, SI 2006/2803.

Further provision has been made in order to prevent the spread of avian influenza, and the transmission of that disease from birds to pigs and other mammals: see the Avian Influenza and Influenza of Avian Origin in Mammals (England) (No 2) Order 2006, SI 2006/2702; the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006, SI 2006/2927; the Avian Influenza (H5N1 in Poultry) (England) Order 2006, SI 2006/3247 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006, SI 2006/3309 (amended by SI 2007/3375); the Avian Influenza (H5N1 in Wild Birds) (England) Order 2006, SI 2006/3249 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Wild Birds) (Wales) Order 2006, SI 2006/3310 (amended by SI 2007/3375).

2 'Avian influenza' means an infection of poultry or other captive birds caused by any influenza A virus of the subtypes H5 or H7 or with an intravenous pathogenicity index in six week old chickens greater than 1.2: Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 2.

3 'Poultry' means all birds that are reared or kept in captivity for the production of meat or eggs for consumption, the production of other commercial products, for restocking supplies of game or for the purposes of any breeding programme for the production of these categories of birds: Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 2.

4 'Other captive bird' means any bird kept in captivity which is not poultry and includes a pet bird and any bird kept for shows, races, exhibitions, competitions, breeding or for sale: Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 2.

5 See the Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 6(1), (2). The Secretary of State must not grant a licence under reg 6(1) unless (1) a veterinary risk assessment has been carried out; and (2) he is satisfied that such a gathering and the transit of birds to and from such a gathering would not significantly increase the risk of the transmission of avian influenza virus: reg 6(3). Licences and notices under the regulations must be in writing and may be amended, suspended or revoked in writing at any time: reg 3(1). Licences may be general or specific and subject to such conditions as the person granting them considers necessary: reg 3(2). As to production of licences see reg 5. As to licences granted in Scotland or Wales see reg 4. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

6 'Keeper' means the person with day to day responsibility for poultry or other captive birds at any premises: Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 2.

7 'Premises' includes any land, building or place: Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 2.

8 See the Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 7. The information to be notified is (1) the address and holding number (if it has one) of the premises; (2) the keeper's name and address and, if different, those of the owner of the poultry and the occupier of the premises; (3) the species kept at the premises; (4) the husbandry system or systems in use at the premises, including whether poultry are kept for the production of meat, hatching eggs or eggs for consumption; (5) the number of each species of poultry usually kept at the premises; (6) the incubator capacity of any hatchery; (7) details of any seasonal stocking variations which might result in significant differences in the numbers or species of poultry on the premises; (8) the number of each species of poultry with access to the open air; and (9) the presence on or in the vicinity of the premises of any body of water which attracts wild birds: reg 7(1). 'Occupier' means, in relation to any premises, the person in charge of those premises: reg 2.

9 'Vaccinate' means treat poultry or other captive birds with vaccine against avian influenza: Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 2.

10 'Zoo' means either (1) a permanent establishment where animals of wild species are kept for exhibition to the public for seven or more days a year, with the exception of circuses and pet shops; or (2) an approved body, institute or centre, as defined in EEC Council Directive 92/65 (OJ L268, 14.9.1992, p 54) art 2(1) point (c): Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 2.

11 Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 8(1). This does not apply to (1) anything done under the authority of a licence granted under the Specified Animal Pathogens Order 2008, SI 2008/944, art 4; or (2) administration of a vaccine for research purposes in accordance with an animal test certificate granted under the Veterinary Medicines Regulations 2007, SI 2007/2539, Sch 4 para 9: Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 8(2); Interpretation Act 1978 ss 17(2)(b), 23(2). As to the vaccination of poultry and other captive birds see the text to notes 29-30.

12 See the Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 9(1). He may do so on condition that he has carried out a risk assessment and considers there is a risk that avian

influenza will be transmitted to zoo birds or to categories of such birds: reg 9(2). As part of his risk assessment, the Secretary of State must consider whether a zoo is (1) on a migratory flyway; (2) close to any body of water where migratory birds may gather; (3) located in an area with a high density of migratory birds: reg 9(3). The Secretary of State must specify, in a notice or licence under reg 9: (a) the number and species of birds to be vaccinated; (b) biosecurity conditions to be met at the zoo or any part of the zoo; (c) conditions relating to the storage and administration of vaccine: reg 9(4). The Secretary of State must ensure that vaccination is carried out in accordance with the preventive vaccination plan approved by the European Commission under EC Commission Decision 2006/474 (OJ L187, 8.7.2006, p 37) art 5: Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 9(5). The Animal Health Act 1981 s 16(2)-(17) (treatment after exposure to infection: see PARA 1051), s 16A (slaughter of vaccinated animals: see PARA 1064) and s 62A (power of entry in connection with slaughter: see PARA 1091) apply as if vaccination under the Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, was carried out in exercise of the power to vaccinate in the Animal Health Act 1981 s 16(1): Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 10.

13 No person may move any vaccinated zoo bird unless he is licensed to do so by a veterinary inspector or by an inspector acting under the direction of a veterinary inspector: Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 11(1). 'Veterinary inspector' means a person appointed as such by the Secretary of State for the purposes of the Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, or under the Animal Health Act 1981; and 'inspector' means an inspector appointed by the Secretary of State or by a local authority for the purposes of the Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, or under the Animal Health Act 1981 and, unless the context otherwise requires, includes a veterinary inspector: Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 2. A veterinary inspector or inspector acting under his direction may only license the movement of vaccinated zoo birds to a zoo in the United Kingdom or in another member state or directly to a third country: reg 11(2). An inspector must supervise any such movement while the bird is in England: reg 11(4). A veterinary inspector or inspector acting under his direction must not license a movement to another member state or to a third country unless its competent authority has authorised the movement: reg 11(3). For these purposes, 'competent authority' means (1) in relation to a member state, the authority in that member state authorised to carry out physical checks or administrative formalities in accordance with EC Council Directive 2005/94 (OJ L10, 14.1.2006, p 16); and (2) in relation to third countries, the authority in that third country authorised to regulate the importation of zoo birds: Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 11(7). No person may release any vaccinated zoo bird into the wild unless he is licensed to do so by a veterinary inspector: reg 11(5). No person may supply or sell, for human consumption, a product from a vaccinated zoo bird: reg 11(6).

14 Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 12.

15 Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 13.

16 See the Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 14(1). The costs incurred by any person in taking action required, or in refraining from taking action prohibited, under the regulations must be met by that person unless the Secretary of State directs otherwise in writing: reg 14(4).

17 See the Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 14(2).

18 See the Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 14(3).

19 See the Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 15(1). On production of the record, the person performing the function may (1) copy the record, in whatever form it is held; (2) require any computer record to be produced in a form which can be taken away; and (3) take any record away and retain it until he has carried out his functions under the regulations: reg 15(2).

20 See the Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 16. If the keeper of any poultry or other captive bird is unable to move it from premises on the termination of his right of occupation because of a movement restriction imposed under the regulations and continues to apply for seven days after any such restriction has been removed, the person entitled to occupation of the premises following that termination must provide such facilities for feeding, tending or otherwise using the poultry or other captive bird (including selling it) as the keeper may reasonably require, and must allow entry to the premises to that keeper and any person authorised by him at reasonable times for feeding, tending or otherwise using the poultry or other captive bird: reg 16(1), (2). If the keeper is unable or unwilling to feed or tend the poultry or other captive bird, the person entitled to occupation of the premises must take such steps as are necessary to ensure it is properly fed and tended: reg 16(3). The keeper of the poultry or other captive bird is liable to pay the reasonable costs incurred under reg 16 by any person feeding or tending it, or providing facilities for feeding, tending or otherwise using it: reg 16(4).

21 'Local authority' means (1) in any part of England where there is, within the meaning of the Local Government Changes for England Regulations 1994, SI 1994/867, a unitary authority for that local government

area, that authority; (2) where there is not a unitary authority (a) in a metropolitan district, the council of that district; (b) in a non-metropolitan county, the council of that county; (c) in each London borough, the council of that borough; (d) in the city of London, the Common Council: Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 2.

22 Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 17.

23 'Vehicle' includes (1) a trailer, semi-trailer or other thing designed or adapted to be towed by another vehicle; (2) a detachable part of any vehicle; and (3) a container or other structure designed or adapted to be carried on a vehicle: Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 2.

24 Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 18(1). 'Disinfect' means disinfect with a disinfectant approved by the Secretary of State under the Diseases of Animals (Approved Disinfectants) (England) Order 2007, SI 2007/448, for use under the Diseases of Poultry (England) Order 2003, SI 2003/1078: Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 2; Interpretation Act 1978 ss 17(2)(b), 23(2).

25 Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 18(2). The Animal Health Act 1981 s 63 (general powers of inspectors: see PARA 1096), s 64 (powers of inspectors as to poultry: see PARA 1110), s 64A (powers of inspectors relating to Community obligations: see PARA 1096), and s 65(1)-(3) (power to detain vessels and aircraft: see PARA 1096) apply as if the Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, were an order made under the Animal Health Act 1981: Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 18(3).

26 Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 19(1). Such powers include powers (1) to require, by notice, any person to take or refrain from specified action in respect of any place, animal, bird, vehicle, or other thing; and (2) to seize and detain any thing: reg 19(2).

27 See the Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 20(1), which applies certain provisions of the Animal Health Act 1981 as if the regulations were an order made under that Act. Those provisions are: ss 66, 66A (refusal and obstruction: see PARAS 1096, 1091 respectively), s 67 (issue of false licences etc: see PARA 1099), s 68 (issue of licences etc in blank: see PARA 1099), s 71 (other offences as to licences: see PARA 1099), s 71A (time limit for prosecutions: see PARA 1098), s 73 (general offences: see PARA 1100), s 77 (money recoverable summarily: see PARA 1098) and s 79(1)-(4) (evidence and procedure: see PARAS 1052, 1098, 1102). Section 69 (falsely obtaining licences etc: see PARA 1099) applies as if licences granted under the Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, were granted under an order made under the Animal Health Act 1981, and s 75 (penalties for certain summary offences: see PARA 1101) applies as if the Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, were an order made under the Animal Health Act 1981 except that any term of imprisonment on summary conviction must not exceed three months: Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 20(2), (3). As to offences by a body corporate see the Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 21.

28 See the Avian Influenza (Preventive Measures) (England) Regulations 2006, SI 2006/2701, reg 22. Enforcement is generally by the local authority (reg 22(1)), but the Secretary of State may direct, in relation to cases of a particular description or to a particular case, that he will enforce the regulations instead (reg 22(2)).

29 See the Avian Influenza (Vaccination) (England) Regulations 2006, SI 2006/2703. Similar provision is made in relation to Wales by the Avian Influenza (Vaccination) (Wales) (No 2) Regulations 2006, SI 2006/2932.

30 See the Avian Influenza (Vaccination) (England) Regulations 2006, SI 2006/2703, regs 5-11. Failure to comply with the regulations is an offence under the Animal Health Act 1981 s 73 (see PARA 1100): Avian Influenza (Vaccination) (England) Regulations 2006, SI 2006/2703, reg 21.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1105 Avian influenza

NOTE 1--SI 2006/2702 amended: see PARA 868. SI 2006/2803 amended: SI 2010/619. See also EC Commission Regulation 616/2009 (OJ L181, 14.7.2009, p 16). See also the Poultry Compartments (England) Order 2010, SI 2010/108, and the Poultry Compartments (Fees) (England) Order 2010, SI 2010/270.

NOTES 12, 13, 30--The Secretary of State may charge a fee in respect of expenses reasonably incurred in connection with a licence to vaccinate a bird in a zoo against avian influenza under SI 2006/2701 art 9(1), move a vaccinated zoo bird under reg 11(1), release a vaccinated zoo bird under reg 11(5), or vaccinate poultry, other captive birds or any category of poultry or other captive birds against avian influenza under SI 2006/2703 reg 7: Avian Influenza (Fees for the Licensed Vaccination of Birds) (England) Regulations 2007, SI 2007/954.

TEXT AND NOTE 15--Notification must now be given to the Secretary of State instead of the Divisional Veterinary Manager: SI 2006/2701 reg 13 (amended by SI 2009/2712).

NOTE 29--SI 2006/2932 amended: SI 2010/619.

NOTE 30--SI 2006/2703 reg 11 amended: SI 2009/2712.

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1106. Notice of disease; separation.

The Secretary of State or the Welsh Ministers¹ may by order² regulate the separation of diseased poultry from poultry not affected with disease, and the notification of disease in, or illness of, poultry³.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 See the Diseases of Poultry (England) Order 2003, SI 2003/1078 (amended by SI 2006/1197, so as not to apply to avian influenza); and the Diseases of Poultry (Wales) Order 2003, SI 2003/1079 (amended by SI 2006/1762, so as not to apply to avian influenza); and PARA 1107. See also the Avian Influenza and Influenza of Avian Origin in Mammals (England) (No 2) Order 2006, SI 2006/2702; the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006, SI 2006/2927; the Avian Influenza (H5N1 in Poultry) (England) Order 2006, SI 2006/3247 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Wild Birds) (England) Order 2006, SI 2006/3249 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006, SI 2006/3309 (amended by SI 2007/3375); and the Avian Influenza (H5N1 in Wild Birds) (Wales) Order 2006, SI 2006/3310 (amended by SI 2007/3375).

3 Animal Health Act 1981 s 15(5).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1106 Notice of disease; separation

NOTE 2--SI 2003/1078 further amended: see PARA 1052. SI 2006/2702 amended: see PARA 868.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(3) POULTRY/1107. Infected places and areas.

1107. Infected places and areas.

A person who has in his possession or under his charge any bird¹ or carcase² having or suspected of having a designated disease³, must immediately inform the divisional veterinary manager⁴ and take all reasonable steps to ensure that the specified restrictions and requirements⁵ are complied with⁶. A person who examines or inspects any bird or carcase or who analyses a sample taken from any bird or carcase and suspects the presence of a designated disease must immediately inform the divisional veterinary manager⁷.

If an inspector has reasonable grounds for suspecting that a designated disease exists or has existed on any premises⁸ (whether or not notification as above has been made), he must serve a notice on the occupier or person in charge of the premises requiring him to comply with the specified restrictions and requirements⁹. In order to ascertain whether or not a designated disease exists or has existed on any premises, a veterinary inspector must (1) enter the premises and carry out such inquiries, examinations and tests and take such samples (including live birds and carcasses), as are necessary to ascertain whether disease exists or has existed there and, in particular, to establish (a) the length of time the disease has existed on the premises; (b) the possible origin of the disease on the premises; (c) which premises may have been exposed to contamination by the disease from the premises under inquiry; and (d) the extent to which a disease has been carried to or from the premises under inquiry; and may (2) mark, or cause to be marked, for identification purposes any bird, carcase or other thing in relation to which any of the powers under head (1) have been exercised¹⁰.

If a veterinary inspector suspects that poultry on any premises may have been exposed to the risk of a designated disease¹¹, he must serve a notice on the occupier or person in charge of the premises¹². A veterinary inspector may serve a notice on the occupier or person in charge of any premises if he suspects that poultry on those premises may have been exposed to the risk of any other disease, or if he suspects that any bird on those premises may have been exposed to the risk of any disease (including a designated disease)¹³. On service of such a notice, a veterinary inspector may enter premises which are the subject of such notice and may take such measures as he considers necessary to establish whether there are reasonable grounds for suspicion of disease, including inspecting records, carrying out inquiries, examinations and tests and taking samples (including live birds and carcasses); and count the birds and monitor their movements¹⁴. On service of such a notice, no person may move any bird or any thing liable to transmit disease from the premises except under the authority of a licence granted by a veterinary inspector¹⁵.

Once the presence of the disease on premises has been confirmed by the Chief Veterinary Officer of the Department for Environment, Food and Rural Affairs or a person authorised by him, a veterinary inspector must, in the case of poultry, and in case of other captive birds or racing pigeons¹⁶ may, serve notice on the occupier or the person in charge of the premises imposing additional restrictions and requirements¹⁷. A veterinary inspector may also serve such a notice on the occupier or person in charge of suspect premises, that is, premises containing poultry, other captive birds or racing pigeons which may, in the opinion of the veterinary inspector, have been exposed to the risk of a designated disease because of the location or configuration of those premises or their contact with premises (in England or elsewhere) where the presence of a designated disease has been confirmed¹⁸.

A person upon whom notice has been served must take all reasonable steps to ensure that the notice is complied with, unless he is authorised by a licence issued by a veterinary inspector to act otherwise, and must provide such reasonable assistance as the veterinary inspector may

require for the purpose of exercising his powers under these provisions¹⁹. If any person fails to comply with any restriction or requirement imposed by a notice, an inspector or other officer of the Secretary of State or an inspector of the local authority²⁰ may seize or cause to be seized anything which has been moved in contravention of the notice and detain it at such place as he considers appropriate until the notice is withdrawn, or take such other action as may be necessary so as to ensure that any restriction or requirement imposed by the notice is complied with or carried out²¹.

Upon confirmation by the Chief Veterinary Officer or by a person authorised by him of the presence in any area in England or elsewhere of a designated disease in poultry, the Secretary of State must declare the part of that area which is in England to be an infected area²². Upon the presence in any area in England or elsewhere of a designated disease in captive birds other than poultry or in racing pigeons being confirmed by the Chief Veterinary Officer or by a person authorised by him and upon the Secretary of State being satisfied that the presence of that disease in such birds constitutes a serious risk to poultry, the Secretary of State may, by declaratory order, declare the part of that area which is in England to be an infected area²³. An area remains an infected area until such date as may be stated in the declaratory order, or, if none, until the declaratory order is revoked²⁴. Any premises which are partly inside and partly outside an infected area are deemed to be wholly inside that area²⁵. A declaratory order may apply to all birds or to designated species²⁶. A declaratory order must provide for the division of the infected area into protection and surveillance zones, the protection zone being based on a minimum radius of 3 kilometres, itself contained in a surveillance zone based on a minimum radius of 10 kilometres, based on the centre of premises where disease has been confirmed, or such lesser radii as the Secretary of State may declare²⁷.

An organiser of a show or race which takes place wholly or partly in England must ensure that all racing pigeons entered for the race or show have been vaccinated against paramyxovirus 1 in pigeons²⁸. Every person who owns or keeps racing pigeons must keep a record of every race or show for which he enters his pigeons²⁹.

The person in charge of premises on which poultry or racing pigeons are or have been exposed for sale or exhibited must thoroughly cleanse³⁰ and disinfect³¹ those premises, their fittings and any receptacle used for the exposure or exhibition of such birds as soon as practicable after use and in any event before they are used again³². An inspector may, by notice in writing served on the person in charge of any premises or vehicle on or in which any birds are or have been, require the person on whom the notice is served to cleanse and disinfect the premises or vehicle and any fittings or receptacle in such manner as he requires and prohibit the movement into the premises or vehicle of birds until the cleansing and disinfection has been completed to the satisfaction of the inspector³³. Without prejudice to the bringing of proceedings under the Animal Health Act 1981, where such a notice is not complied with, any person authorised by the Secretary of State or the local authority may enter the premises or vehicle to which the notice relates and carry out the work of cleansing and disinfection required, and the cost of such work is recoverable from the person on whom the notice was served³⁴.

Every person who owns or keeps any flock of poultry consisting of at least 250 birds of any species on premises must keep a record in respect of poultry entering or leaving those premises³⁵. Every person who is engaged in the transport or marketing of any poultry or eggs (including any slaughterer or auctioneer) must keep a record in respect of all poultry and eggs transported or marketed by him³⁶. Such records must include in respect of the relevant class of poultry and their eggs (i) the date and place they were obtained; (ii) their species and description; (iii) the name and address of the person from whom they were obtained; (iv) the date they left the premises; (v) their destination on leaving the premises (if known); (vi) the purpose for which they left the premises; and (vii) the name and address of the person to whom they were transferred³⁷. A person who is required to keep a record must retain it for at least 12 months from the date of the recorded transportation or marketing³⁸. A person who

keeps any record required under these provisions must at all reasonable times produce it on demand to an inspector and must provide him with copies if so required³⁹. If a person keeps the record in electronic form, he must provide printed copies of the record or parts of the record as an inspector requires⁴⁰.

A person moving anything under the authority of a licence issued under these provisions must (A) keep the licence with him at all times during the licensed movement; (B) on demand made by an inspector or other officer of the Secretary of State or by an inspector of local authority, produce the licence and allow a copy or extract to be taken; and (C) on such demand, furnish his name and address⁴¹.

A veterinary inspector who enters any premises under these provisions may take with him for any purpose relating to their execution and enforcement such persons and such things as he considers necessary⁴².

Contravention of these provisions is an offence under the Animal Health Act 1981⁴³.

1 'Bird' includes poultry, unless the context otherwise requires: Diseases of Poultry (England) Order 2003, SI 2003/1078, art 3(1). 'Poultry' includes all birds: see art 2(1).

2 'Carcase' means the carcase of poultry or of any bird other than poultry, as the context requires, and includes part of a carcase: Diseases of Poultry (England) Order 2003, SI 2003/1078, art 3(1).

3 'Designated disease' means paramyxovirus 1 in pigeons, avian influenza and Newcastle disease: Diseases of Poultry (England) Order 2003, SI 2003/1078, art 3(1). As to the meaning of 'disease' for these purposes see art 2(2). The order does not apply in relation to avian influenza: art 1(3) (added by SI 2006/1197). As to avian influenza see PARA 1105. For provision in relation to Wales see the Diseases of Poultry (Wales) Order 2003, SI 2003/1079 (amended by SI 2006/1762, so as not to apply to avian influenza).

4 'Divisional veterinary manager' means the veterinary inspector appointed by the Secretary of State to receive information about diseased or suspected birds or carcasses in the area in which such birds or carcasses are: Diseases of Poultry (England) Order 2003, SI 2003/1078, art 3(1). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706. As to veterinary inspectors see PARA 1120. As to divisional veterinary managers see PARA 1120.

5 le those set out in the Diseases of Poultry (England) Order 2003, SI 2003/1078, Sch 1 Pt I.

6 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 4(1).

7 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 4(2).

8 'Premises' includes any place: Diseases of Poultry (England) Order 2003, SI 2003/1078, art 3(1).

9 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 5. The restrictions and requirements are listed in Sch 1 Pt I.

10 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 6(1). Collection of samples and laboratory testing must be carried out, in relation to Newcastle disease and paramyxovirus in pigeons, in accordance with EC Council Directive 92/66 (OJ L260, 5.9.92, p 1), Annex III: Diseases of Poultry (England) Order 2003, SI 2003/1078, art 6(2). The occupier or person in charge of the premises or any person in his employment must provide such reasonable assistance to a veterinary inspector as he may require for the exercise of these powers: art 6(3).

11 For these purposes, exposure to the risk of a designated disease or to another disease means exposure, either directly or indirectly, as a result of the movement of persons, animals or vehicles or in any other way: Diseases of Poultry (England) Order 2003, SI 2003/1078, art 7(3).

12 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 10(1). A veterinary inspector may limit the measures provided for in art 10 to a part of the premises and to the birds contained there, provided that the birds there have been housed, kept and fed completely separately by separate staff: art 10(6).

13 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 10(2).

14 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 10(4).

- 15 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 10(5).
- 16 le as defined in the Diseases of Poultry (England) Order 2003, SI 2003/1078, art 3(1).
- 17 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 8(1). The additional restrictions and requirements are listed in Sch 1 Pt II.
- 18 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 8(2), (3).
- 19 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 9(1).
- 20 As to local authorities see PARA 1121.
- 21 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 9(2). Any action taken under art 9(2) is without prejudice to any proceedings for an offence arising out of contravention of a notice served under the Diseases of Poultry (England) Order 2003, SI 2003/1078: art 9(3). A person who fails to comply with a notice is liable for the costs incurred under art 9(2): art 9(4).
- 22 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 10(1). The declaration is in the form of a declaratory order: art 10(1). On an order being made under art 10(1), the Secretary of State may, by notice published in such manner as he thinks fit, require the vaccination of any species of poultry against a designated disease in such territorial area and for such period as he thinks fit and it is the duty of every owner and every person in charge of poultry in that area to comply with that notice: art 11.
- 23 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 10(2).
- 24 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 10(3).
- 25 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 10(4).
- 26 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 10(5).
- 27 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 10(6). The provisions of Sch 2 apply in an area declared an infected area except to the extent that they are varied or excepted by the declaratory order or to the extent that anything which would otherwise be a breach of this Order is authorised by a licence issued by a veterinary inspector: art 10(7).
- 28 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 12(1).
- 29 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 10(2).
- 30 For the purposes of Diseases of Poultry (England) Order 2003, SI 2003/1078, 'cleansing' includes the disposal of all litter, droppings and other matter in a manner which does not present a risk of the spread of disease: art 13(4).
- 31 'Disinfect' means disinfect with a disinfectant approved under the Diseases of Animals (Approved Disinfectants) (England) Order 2007, SI 2007/448, for the purposes of the Diseases of Poultry (England) Order 2003, SI 2003/1078: art 3(1); Interpretation Act 1978 ss 17(2)(b), 23(2).
- 32 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 13(1).
- 33 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 13(2).
- 34 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 13(3).
- 35 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 14(1).
- 36 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 14(2).
- 37 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 14(3).
- 38 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 14(4).
- 39 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 14(5).
- 40 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 14(6).
- 41 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 15.

42 Diseases of Poultry (England) Order 2003, SI 2003/1078, art 16.

43 le the Animal Health Act 1981 s 73: see PARA 1100.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1107 Infected places and areas

TEXT AND NOTES 4-7--SI 2003/1078 art 4(1), (2) amended to replace references to 'divisional veterinary manager' with references to 'Secretary of State'; definition of 'divisional veterinary manager' in art 3(1) revoked: SI 2009/2713.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(3) POULTRY/1108. Slaughter.

1108. Slaughter.

The Secretary of State or the Welsh Ministers may if they think fit cause to be slaughtered (1) any diseased or suspected poultry; (2) any poultry which are or have been in the same field, pen, shed or other place as, or otherwise in contact with, diseased poultry or which appear to them to have been exposed to infection; (3) any poultry the Secretary of State or the Welsh Ministers think should be slaughtered with a view to preventing the spread of avian influenza or Newcastle disease¹.

For poultry, other than diseased poultry, so slaughtered the Secretary of State or the Welsh Ministers must pay as compensation the value of the bird immediately before it was slaughtered². For diseased poultry so slaughtered they may by order prescribe the payment of compensation in accordance with a scale approved by the Treasury, except in the case of poultry affected with fowl pest in any of its forms, including Newcastle disease and fowl plague³.

The Secretary of State or the Welsh Ministers may also by order⁴ provide for the seizure of carcasses, fodder, litter⁵, eggs and fertilisers and the destruction, disposal or treatment of anything so seized as they may think expedient for preventing the spread of any poultry disease⁶. Provisions for compensation at the value at the time of seizure are similar to those outlined in respect of slaughter⁷.

Slaughter of poultry otherwise than under the above powers is governed by legislation treated elsewhere in this work⁸.

1 Animal Health Act 1981 s 31(e), Sch 3 para 5(1) (Sch 3 para 5 (1) amended by SI 2003/1734). The Secretary of State or the Welsh Ministers may exercise the power under head (3) in the text whether or not poultry (1) are affected with avian influenza or Newcastle disease or suspected of being so affected; (2) are or have been in contact with poultry so affected; (3) have been exposed to the infection of avian influenza or Newcastle disease; (4) have been treated with vaccine against avian influenza or Newcastle disease: Animal Health Act 1981 Sch 3 para 5(1A) (added by SI 2003/1734). The Animal Health Act 1981 s 32 (slaughter of animals: see PARA 1089) does not apply to poultry: s 32(4). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 Animal Health Act 1981 Sch 3 para 5(2). As to income tax in relation to compensation see **INCOME TAXATION** vol 23(1) (Reissue) PARA 279.

3 Animal Health Act 1981 Sch 3 para 5(3). At the date this volume states the law, no such order had been made.

4 See the Poultry (Seizure of Hatching Eggs) Order 1990, SI 1990/232; the Diseases of Animals (Seizure) Order 1993, SI 1993/1685; the Diseases of Poultry (England) Order 2003, SI 2003/1078 (amended by SI 2006/1197, so as not to apply to avian influenza); the Diseases of Poultry (Wales) Order 2003, SI 2003/1079 (amended by SI 2006/1762, so as not to apply to avian influenza). See also the Avian Influenza and Influenza of Avian Origin in Mammals (England) (No 2) Order 2006, SI 2006/2702; the Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006, SI 2006/2927; the Avian Influenza (H5N1 in Poultry) (England) Order 2006, SI 2006/3247 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Wild Birds) (England) Order 2006, SI 2006/3249 (amended by SI 2007/3303); the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006, SI 2006/3309 (amended by SI 2007/3375); and the Avian Influenza (H5N1 in Wild Birds) (Wales) Order 2006, SI 2006/3310 (amended by SI 2007/3375).

5 As to the meanings of 'carcase', 'fodder' and 'litter' see PARA 1072 note 11.

6 Animal Health Act 1981 s 35(1) (amended by the Animal Health and Welfare Act 1984 s 1).

7 See the Animal Health Act 1981 s 36 (amended by the Animal Health and Welfare Act 1984 s 1(3)); and PARA 1092.

8 See **FOOD**.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1108 Slaughter

NOTE 4--SI 2003/1078 further amended: see PARA 1052. SI 2006/2702 amended: see PARA 868.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(3) POULTRY/1109. Import and export of poultry and eggs.

1109. Import and export of poultry and eggs.

The Secretary of State or the Welsh Ministers¹ may make orders² prohibiting or regulating the import into Great Britain³ of poultry or poultry carcasses, and eggs⁴. They may also make orders regulating the export of poultry or poultry carcasses from Great Britain to member states of the European Community⁵.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 See the Importation of Birds, Poultry and Hatching Eggs Order 1979, SI 1979/1702 (amended by SI 1990/2371; SI 1996/3124; SI 2000/1673); the Importation of Embryos, Ova and Semen Order 1980, SI 1980/12 (amended by SI 1984/1326; SI 1990/2371; SI 1994/2920; SI 1996/3124; SI 2000/1673); the Importation of Animal Products and Poultry Products Order 1980, SI 1980/14 (amended by SI 1982/948; SI 1990/2371; SI 1994/2920; SI 1994/3142; SI 1994/3144; SI 1996/3124; SI 1996/3125; SI 1997/322; SI 2002/1227).

These orders do not apply in relation to imports from other member states or in certain cases from specified third countries: Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 35, Sch 9 (substituted and amended respectively by SI 2007/1621); Animals and Animal Products (Import and Export) (Wales) Regulations 2006, SI 2006/1536, reg 35, Sch 9 (substituted and amended respectively by SI 2007/1627). Also, in relation to England, the Importation of Embryos, Ova and Semen Order 1980, SI 1980/12, does not apply to products to which the Products of Animal Origin (Third Country Imports) (England) (No 4) Regulations 2004, SI 2004/3388, apply, except embryos, ova and semen of the ovine and caprine species; and the Importation of Animal Products and Poultry Products Order 1980, SI 1980/14, does not apply to products to which the Products of Animal Origin (Third Country Imports) (England) (No 4) Regulations 2004, SI 2004/3388, apply, except the products referred to in reg 4: reg 67(1), (2).

3 As to the meaning of 'Great Britain' see PARA 830 note 21.

4 See the Animal Health Act 1981 s 10; and PARA 1081. See also Case 40/82 *EC Commission v United Kingdom* [1984] ECR 283, ECJ.

5 See the Animal Health Act 1981 s 11; and PARA 1087.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1109 Import and export of poultry and eggs

NOTE 2--SI 2006/1471 reg 35 amended: SI 2008/3203. SI 2006/1536 reg 35 amended: SI 2009/390. SI 2004/3388 replaced: Products of Animal Origin (Third Country Imports) (England) Regulations 2006, SI 2006/2841 (amended by SI 2009/875).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(3) POULTRY/1110. Functions of inspectors.

1110. Functions of inspectors.

For the purpose of enforcing an order for protecting poultry from unnecessary suffering¹ an inspector² may examine poultry to which the order relates and any receptacle or vehicle used for their conveyance or exposure for sale, and may enter any premises, vessel or aircraft in which he has reasonable grounds for supposing that there are poultry exposed for sale, in course of conveyance or packed for conveyance or exposure for sale³.

A Department inspector and, if so authorised by order of the Secretary of State or the Welsh Ministers, a local authority inspector, may enter any pen, shed, land or other place in which he has reasonable grounds for supposing that poultry are or have been kept, for the purpose of ascertaining whether disease exists or has existed therein⁴.

1 See PARA 868.

2 As to inspectors and their functions and powers generally see PARA 1096.

3 Animal Health Act 1981 s 64(2).

4 Animal Health Act 1981 s 64(1). However, the powers conferred by s 63(9) do not apply: see PARA 1096 note 5.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(3) POULTRY/1111. Breeding flocks and hatcheries.

1111. Breeding flocks and hatcheries.

The occupier¹ of a poultry² hatchery with a total incubator capacity of 1,000 eggs or more must notify the Secretary of State³ of specified information⁴ (1) within three months of 28 January 2008⁵; or (2) in the case of such a hatchery established after that date, within three months of the establishment of the hatchery⁶. The occupier must notify the Secretary of State of any change or addition to that information within three months of the change or addition⁷. If a hatchery incubates eggs of the species *Gallus gallus* and has a capacity of 1,000 eggs or more, when eggs or chicks are moved on to or off the hatchery the occupier must record specified information⁸.

The occupier of a holding on which one or more breeding flocks⁹ or laying flocks¹⁰ of at least 250 poultry of any single species are kept must notify the Secretary of State of specified information¹¹ (a) within three months of 28 January 2008; or (b) in the case of such a holding established after that date, within three months of the establishment of the holding¹². The occupier must notify the Secretary of State of any change or addition to that information within three months of the change or addition¹³.

Special provisions apply in relation to breeding or laying flocks of the species *Gallus gallus*¹⁴; these include notification of the arrival of breeding flocks¹⁵, notification of the movement to the laying phase of breeding flocks¹⁶, sampling¹⁷, and making records of samples and movements¹⁸. In addition, no person may administer any antimicrobial to any bird of the species *Gallus gallus* as a specific method to control salmonella in breach of the European legislation¹⁹ as to the use of microbials²⁰, or administer any live salmonella vaccine to any bird of the species *Gallus gallus* in breach the European legislation²¹ as to the use of vaccines²².

Any person required to keep a record under these provisions must keep it for two years from the date it is made and must produce it on demand to an inspector or officer of the Secretary of State and allow a copy of it to be made or an extract from it to be taken²³.

A person must not tamper with a sample or do anything to it that is likely to affect the result of any test required to be carried out under these provisions, except as specifically provided for²⁴.

If any person fails to take any action required by any of the above provisions, an inspector may arrange for such action to be taken at the expense of the person in default²⁵. Generally, enforcement is by the local authority²⁶. Breach of the provisions is an offence under the Animal Health Act 1981²⁷.

1 'Occupier' means, in relation to any hatchery or holding, the person in charge of the hatchery or holding: Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 2.

2 'Poultry' means birds of the species *Gallus gallus*, turkey, ducks and geese: Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 2.

3 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706. In relation to Wales see the Control of Salmonella in Poultry (Wales) Order 2008, SI 2008/524.

Provision is made for carrying out a survey for salmonella prevalence in laying flocks and broiler chickens: see the Salmonella in Turkey Flocks and Slaughter Pigs (Survey Powers) (England) Regulations 2006, SI 2006/2821; the Salmonella in Laying Flocks (Survey Powers) (Wales) Regulations 2005, SI 2005/586; and the Salmonella in Broiler Flocks (Survey Powers) (Wales) Regulations 2006, SI 2006/1511.

4 The information to be notified is (1) the name, address and telephone number of the occupier; (2) the address and telephone number of the hatchery; (3) the incubator capacity of the hatchery; and (4) the species of poultry hatched at the hatchery: Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 4(4).

5 le the date on which the Control of Salmonella in Poultry Order 2007, SI 2007/3574, came into force: see art 1. In Wales, the relevant date is 25 March 2008: see the Control of Salmonella in Poultry (Wales) Order 2008, SI 2008/524, art 1.

6 Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 4(1). Article 4 does not apply to any occupier who has notified the Secretary of State of that information under any other enactment: art 4(3).

7 Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 4(2).

8 Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 5. The information to be recorded is (1) the date of the movement; (2) the number of eggs or chicks moved; (3) whether the movement is on to or off the hatchery; (4) if the movement is off the holding, the holding of destination; and (5) in the case of eggs brought on to the hatchery for incubation, the holding of origin: art 5(a)-(e).

9 'Breeding flock' means a flock kept for the production of eggs intended for incubation; and 'flock' means poultry of the same health status kept on the same holding or in the same enclosure and constituting a single epidemiological unit and, in the case of housed poultry, includes all birds sharing the same airspace: Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 2.

10 'Laying flock' means a flock of poultry kept for the production of eggs intended for human consumption: Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 2.

11 The information to be notified is (1) the name, address and telephone number of the holding; (2) the name, address and telephone number of the occupier and of the person who owns each flock on the holding; (3) the number of flocks on the holding; (4) for each flock (a) the identification of the flock; (b) whether it is a breeding flock or a laying flock; (c) the species; (d) the number of poultry; (5) for each breeding flock (a) whether the flock is a flock of layer breeders or meat breeders; and (b) the status in the breeding pyramid of the flock: Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 6(4). 'Layer breeder' means poultry kept for the production of eggs intended for the incubation and hatching of chicks that will be grown to produce eggs for human consumption or whose progeny will be grown to produce eggs for human consumption; and 'chick' means a bird less than 72 hours old that has not been fed: art 2. 'Meat breeder' means poultry kept for the production of eggs intended for the incubation and hatching of chicks that will be grown to produce meat for human consumption or whose progeny will be grown to produce meat for human consumption: art 2.

12 Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 6(1). Article 6 does not apply to any occupier who has notified the Secretary of State of that information under any other enactment: art 6(3).

13 Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 6(2).

14 See the Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 7, Schedule, which applies in relation to any holding on which one or more breeding flocks of the species *Gallus gallus* of at least 250 birds are kept (Schedule para 1(1)) and in relation to any holding on which one or more laying flocks of the species *Gallus gallus* are kept unless all the eggs are for private domestic use or supplied in small quantities by the producer to the final consumer or to local retail shops (Schedule para 1(2)).

15 See the Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 7, Schedule para 2.

16 See the Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 7, Schedule para 3.

17 See the Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 7, Schedule paras 4-9, 12.

18 See the Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 7, Schedule paras 10, 11.

19 le EC Commission Regulation 1177/2006 (OJ L212, 2.8.2006, p 3) art 2.

20 Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 8.

21 le EC Commission Regulation 1177/2006 (OJ L212, 2.8.2006, p 3) art 3(1).

22 Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 9.

23 Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 10.

24 Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 11.

25 Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 12.

26 See the Control of Salmonella in Poultry Order 2007, SI 2007/3574, art 13(1). The Secretary of State may direct, in relation to cases of a particular description or any particular case, that the Secretary of State will enforce the Order instead of the local authority: art 13(2).

27 See the Animal Health Act 1981 s 73: see PARA 1100. As to penalties for offences against the Animal Health Act 1981 see PARA 1101.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1111 Breeding flocks and hatcheries

TEXT AND NOTES--See also the Control of Salmonella in Broiler Flocks Order 2009, SI 2009/260; the Control of Salmonella in Broiler Flocks (Wales) Order 2009, SI 2009/441; the Control of Salmonella in Turkey Flocks Order 2009, SI 2009/3271; and the Control of Salmonella in Turkey Flocks (Wales) Order 2010, SI 2010/65.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(4) BEES/1112. Bees; general powers.

(4) BEES

1112. Bees; general powers.

Orders may be made¹ for preventing the introduction into, or spreading within, Great Britain of pests or diseases affecting bees². Such an order may, inter alia³, prohibit or regulate the importation into or movement within Great Britain of bees and combs, bee products (for instance honey or beeswax), hives, containers, other appliances used in connection with keeping or transporting bees, and any other thing which has or may have been exposed to infection⁴; and it may make provision as to: (1) the conditions to be observed on importation of bees; (2) licences for importation; (3) the securing of information relevant to determining whether any bees or other things subject to control have been exposed to infection; (4) the circumstances in which and the time at which bees and other things are to be regarded as imported; (5) the treatment of infected bees; (6) cleansing and disinfection; (7) the marking of hives and other containers; (8) the recovery of costs; and (9) the payment of compensation⁵. An authorised person⁶ may examine bees or other things controlled by an order, and take samples of them⁷, and destroy any that are found to be infected or to have been exposed to infection⁸. Anyone importing bees or other things into, or moving them within, Great Britain, or otherwise contravening or failing to comply with an order or the terms of a licence issued under such an order commits an offence, punishable on summary conviction with a fine not exceeding level 5 on the standard scale⁹. Authorised persons have power to enter any premises or other place, and any vessel, boat, hovercraft, aircraft or other vehicle, where they reasonably suppose that there are or have been bees or other things subject to control¹⁰, and anyone intentionally obstructing a person acting in exercise of this power is liable on summary conviction to a fine not exceeding level 3 on the standard scale¹¹.

1 See the Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, and the Bee Diseases and Pests Control (Wales) Order 2006, SI 2006/1710 (PARA 1114).

2 Bees Act 1980 s 1(1). The term 'bees' includes bees in any stage of their life cycle: s 3. As to the meaning of 'Great Britain' see PARA 830 note 21.

3 The Secretary of State and the Welsh Ministers are empowered to make such orders as they think fit, and may make different provision for different cases or different areas: Bees Act 1980 s 1(1), (2)(c). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

4 Bees Act 1980 s 1(2)(a).

5 Bees Act 1980 s 1(2)(b), Schedule.

6 I.e. a person generally or specially authorised in writing by the Secretary of State or the Welsh Ministers: see the Bees Act 1980 s 3.

7 Bees Act 1980 s 1(3).

8 Bees Act 1980 s 1(4). They may be destroyed if imported into Great Britain in contravention of an order with or without an opportunity being first allowed for them to be re-exported: s 1(5). No compensation is payable in respect of the exercise of any of these powers: s 1(6).

9 Bees Act 1980 s 1(7) (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 738 note 1.

10 Bees Act 1980 s 2(1). The authorised person must produce evidence of his authority if so required: s 2(2).

11 Bees Act 1980 s 2(3). Where an authorised person is obstructed in the exercise of his power of entry under s 2, he may serve on the owner, occupier or person in charge, a notice prohibiting the removal of any hive, bees or other specified apiarian material: see the Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 6(2), (3); and the Bee Diseases and Pests Control (Wales) Order 2006, SI 2006/1710, art 6(2), (3); see further PARA 1114.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(4) BEES/1113. Importation of bees.

1113. Importation of bees.

The importation of bees into Great Britain is regulated by European legislation implemented by regulations made under the European Communities Act 1972¹. No person may import bees unless they are imported from a specified² country or territory³, and no person may import bees unless the relevant provisions of the European legislation⁴ and any additional requirements are complied with⁵.

When bees which are imported into England in accordance with the above provisions arrive at the apiary of destination (as indicated on the health certificate accompanying the bees), the consignee (as indicated on the health certificate accompanying the bees) must (1) transfer the queen bees to new cages before they are introduced to any local colonies of bees; and (2) send the cages in which the bees were transported from the country of origin, the attendant bees and other material that accompanied the queen bees from their country of origin to the Secretary of State⁶ for a laboratory examination for the presence of a notifiable pest⁷. Following such examination, the Secretary of State must arrange for the cages, attendant bees and other material to be destroyed as soon as reasonably practicable⁸.

Where bees of the species *bombus* are imported into England in accordance with the above provisions, the owner or person in charge of the bees must ensure that the container in which they are transported from the country of origin and all material that accompanies the bees from the country of origin are destroyed either during or immediately at the end of the lifespan of the imported colony⁹.

1 See the Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, the Animal and Animal Products (Import and Export) (Wales) Regulations 2006, SI 2006/1536; and PARA 1083. As to the meaning of 'Great Britain' see PARA 830 note 21.

2 I.e. a country or territory specified in EC Commission Decision 2003/881 concerning the animal health and certification conditions for imports of bees (*apis mellifera* and *bombus* spp) from certain third countries (OJ L328, 17.12.2003, p 26) (as amended by EC Commission Decision 2005/60 (OJ L25, 28.1.2005, p 64)), in respect of which the derogation in Commission Decision 2003/881 art 1(2), Annex III Pt 2 permitting imports of bees from the state of Hawaii in the United States of America may be relied on. Commission Decision 2003/881 is to be read with EEC Council Decision 79/542 (OJ L146, 14.6.1979, p 15).

3 Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, reg 16(2), Sch 7 Pt I para 6; Animal and Animal Products (Import and Export) (Wales) Regulations 2006, SI 2006/1536, reg 16(2), Sch 7 Pt I para 6.

4 I.e. EC Commission Decision 2003/881 (OJ L328, 17.12.2003, p 26) (as amended by EC Commission Decision 2005/60 (OJ L25, 28.1.2005, p 64)) arts 1(1), (2), (3), (4), 2, pursuant to which the derogations from art 1(1), second and third indent, and art 1(2), (3) may be relied on. Commission Decision 2003/881 is to be read with EEC Council Directive 92/65 (OJ L268, 14.9.1992, p 54) and the European international instruments (as defined in the Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, art 1(2); and the Animal and Animal Products (Import and Export) (Wales) Regulations 2006, SI 2006/1536, art 1(2)).

5 Animals and Animal Products (Import and Export) (England) Regulations 2006, SI 2006/1471, art 16(3), Sch 7 Pt II para 11; Animal and Animal Products (Import and Export) (Wales) Regulations 2006, SI 2006/1536, art 16(3), Sch 7 Pt I para 11.

6 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

7 Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 11(1), (2). 'Notifiable pest' means the small hive beetle (*Aethina tumida*) or any species of the *Tropilaelaps* mite: art 2(1). As to the position in relation to Wales see the Bee Diseases and Pests Control (Wales) Order 2006, SI 2006/1710, arts 2(1), 11(1), (2).

8 Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 11(3). As to the position in relation to Wales see the Bee Diseases and Pests Control (Wales) Order 2006, SI 2006/1710, art 11(3).

9 Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 11(4). As to the position in relation to Wales see the Bee Diseases and Pests Control (Wales) Order 2006, SI 2006/1710, art 11(4).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1113 Importation of bees

NOTES 3, 5--SI 2006/1471 Sch 7 substituted: SI 2008/3203. SI 2006/1536 reg 1(2) amended, Sch 7 substituted: SI 2009/390.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(4) BEES/1114. Control of bee diseases.

1114. Control of bee diseases.

Measures have been made for the control of bee diseases¹. An owner or person in charge of a hive² who knows or suspects that (1) any bees from the hive are infected with a notifiable disease³; (2) a notifiable pest⁴ is present in the hive; or (3) a notifiable pest is present on or in the same premises or vehicle as the hive, must immediately notify that fact to the Secretary of State⁵. Where such notification has been given, the owner or person in charge of the hive must not remove, or permit to be removed, from the premises⁶ or vehicle⁷ on or in which the hive is situated (a) any hive, bees, combs, bee products, bee pests⁸, hive debris or appliances⁹; or (b) any other thing liable to spread the notifiable disease or the notifiable pest¹⁰. In the absence of a notice prohibiting removal except under licence¹¹, the prohibition on removal applies until either an authorised person has confirmed by notice¹² that he is satisfied that the bees are not infected with the notifiable disease or that the notifiable pest is not present in the hive or on or in the same premises or vehicle as the hive; or the owner or person in charge of the hive has been informed that the test results on samples submitted to the Secretary of State confirm that the material sampled is free from infection or is not a notifiable pest¹³.

Any other person who has in his possession or charge or discovers in the course of his occupation a bee pest that he knows or suspects is a notifiable pest must immediately notify that fact to the Secretary of State¹⁴. Any person who gives such notification must not remove, or permit to be removed, any bee pest or any other thing by which the notifiable pest is liable to be spread from the premises or vehicle on or in which it is situated¹⁵. In the absence of a notice prohibiting removal, the prohibition on removal applies until either an authorised person has confirmed by notice that he is satisfied that the notifiable pest is not present, or the person who gave notification has been informed that the test results on samples submitted to the Secretary of State confirm that the material sampled is not a notifiable pest or is not infected with a notifiable pest¹⁶.

An authorised person may mark any hive or appliance for identification purposes¹⁷, and no person may in any way interfere with any such identifying mark or permit such a mark to be interfered with¹⁸.

Where an authorised person has reasonable grounds for suspecting that a notifiable disease or a notifiable pest is present on or in any premises or vehicle, he must serve on the owner or person in charge of (i) any hive, bees, combs, bee products, bee pests, hive debris or appliances situated on or in the premises or vehicle; or (ii) any other thing liable to spread the notifiable disease or the notifiable pest situated on or in the premises or vehicle, a notice prohibiting their removal and the removal of any bee pests contained in or affecting them, except under the authority of a licence issued by the Secretary of State¹⁹. Where an authorised person is obstructed in the exercise of his power of entry the Bees Act 1980²⁰, he may serve on the person appearing to him to be the owner or occupier of the premises or the owner or person in charge of the vehicle a notice prohibiting the removal from the premises or vehicle of any hive, bees, combs, bee products, bee pests, hive debris or appliances, or any other thing liable to spread a notifiable disease or a notifiable pest²¹. Such a notice must be revoked if an authorised person is subsequently able to act without obstruction in the exercise of his power of entry on or in the premises or vehicle²².

Disease control measures and pest control measures are prescribed to be taken on the confirmation of the presence of a notifiable disease²³ or a notifiable pest²⁴, which may require the destruction of bees, combs or bee products from the hive affected, or of the hive, debris from the hive and any appliances or other things liable to spread the disease or pest²⁵. The

Secretary of State may by notice declare an area in which he is satisfied that a notifiable pest is present to be an infected area²⁶. The Secretary of State must publish any such notice and any notice amending or revoking such a notice in such manner as he considers appropriate to bring it to the attention of persons likely to be affected by it²⁷.

Beekeepers and other persons are further required to provide reasonable facilities and information to an authorised person²⁸, and unless licensed or carrying out the treatment of bees in accordance with a notice relating to disease control measures, not to treat bees with any substance which may disguise the presence, or render difficult the detection, of a notifiable disease²⁹. Where any person has not complied with a notice served upon him, an authorised person may arrange for it to be complied with and recover the costs involved³⁰.

The Secretary of State may by licence exempt any person who is involved in research into, or in any course of training relating to, pests or diseases affecting bees from any of the above provisions³¹.

Contravention of any of the above provisions or of the provisions of any licence granted or notice served thereunder is an offence³².

1 See the Bee Diseases and Pests Control (England) Order 2006, SI 2006/342. Similar provision is made in relation to Wales: see the Bee Diseases and Pests Control (Wales) Order 2006, SI 2006/1710.

2 'Hive' means any thing that contains or has at any time contained a colony of bees: Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 2(1).

3 'Notifiable disease' means American foul brood or European foul brood: Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 2(1).

4 As to the meaning of 'notifiable pest' see PARA 1113 note 7.

5 Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 3(1). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

6 'Premises' includes any place with or without buildings: Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 2(1).

7 'Vehicle' includes any vessel, boat, hovercraft or aircraft: Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 2(1).

8 'Bee pest' means any beetle, mite or similar organism that may be injurious to bees and that is in any stage of its life cycle: Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 2(1).

9 'Appliances' means containers and any other equipment used in connection with keeping or transporting bees: Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 2(1).

10 Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 4(1). The owner or person in charge of a hive may, however, submit to the Secretary of State for laboratory tests samples of (1) any parts of the hive, bees, combs, bee products or hive debris, to establish whether they are infected with a notifiable disease or a notifiable pest; (2) any bee pest to establish whether it is a notifiable pest; and (3) soil from the area surrounding the hive to establish whether it is infected with a notifiable pest: art 4(2). Any sample submitted under art 4(2) must be packed so as to prevent as far as possible the risk of the spread of infection during transit: art 4(9). If a notice is served under art 6(1) or (2) (see text and notes 19-21), the prohibition on removal in that notice applies in place of the prohibition on removal in art 4(1): art 4(3).

11 Ie under the Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 6(1), (2): see text and notes 19-21.

12 A notice under the Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, must be in writing, may be suspended, amended or revoked by further notice at any time, and may be subject to conditions: art 2(2). Any notice served under the Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, is properly served on any person if (1) delivered to him personally; (2) left at or posted to his home or place of business last known to the Secretary of State; or (3) where the following conditions are fulfilled, sent to him by e-mail: art 14(1). A notice served on any person by e-mail is only properly served on him if he (a) has indicated in writing to the Secretary of State (and has not withdrawn the indication) that he is willing to accept service of

notices under this Order by e-mail; and (b) has provided in writing to the Secretary of State an e-mail address for this purpose: art 14(2).

13 Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 4(4).

14 Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 3(2).

15 Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 4(5). Any person who gives notification under art 3(2) may, however, submit to the Secretary of State for laboratory tests samples of (1) any bee pest to see if it is a notifiable pest; and (2) any other thing, including soil, to see if it is infected with a notifiable pest: art 4(6). Any sample submitted under art 4(6) must be packed so as to prevent as far as possible the risk of the spread of infection during transit: art 4(9). If a notice is served under art 6(1) or (2), the prohibition on removal in that notice applies in place of the prohibition on removal in art 4(5): art 4(7).

16 Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 4(8).

17 Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 5(1).

18 Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 5(2).

19 Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 6(1). A licence under the Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, must be in writing, may be general or specific, may contain conditions and may be suspended, amended or revoked by notice at any time: art 2(4). A general licence must be brought to the attention of those persons whom it is likely to affect by its publication in such newspapers or periodicals or in such other manner as the Secretary of State considers necessary: art 2(5).

20 le under the Bees Act 1980 s 2: see PARA 1112.

21 Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 6(2), (4).

22 Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 6(3).

23 See the Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 7. The presence of a notifiable disease may be confirmed by an authorised person on the basis of a laboratory test result or a field test kit result: art 7(1). A 'field test kit' is a portable test kit that is used for the purpose of confirming the presence of a disease without the need to send samples to a laboratory: art 2(1).

24 See the Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 8. The presence of a notifiable pest may be confirmed by an authorised person on the basis of a laboratory test result or an examination: art 8(1).

25 See the Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, arts 7(2), (3), 8(2), (3). As to notices under arts 7, 8 see art 9.

26 Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 10(1), Schedule. The notice may provide that all or any of the provisions specified in the Schedule apply in all or part of the infected area, and that different provisions apply in different parts of the infected area, as the Secretary of State considers necessary to prevent the spread of the pest: art 10(2). Such a notice may not be subject to conditions: see art 2(3).

27 Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 10(3).

28 See the Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 12(1). Any person upon whom a notice is served under the Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, or who is subject to the provisions of a notice declaring an area to be an infected area within the meaning of art 10 must comply with the provisions of that notice: art 12(4).

29 See the Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 12(2), (3).

30 See the Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 13(1), (2). Any action taken by an authorised person under art 13(1) and any recovery of costs under art 13(2) are without prejudice to any proceedings for an offence arising out of contravention of a notice served under the Bee Diseases and Pests Control (England) Order 2006, SI 2006/342: art 13(3).

31 Bee Diseases and Pests Control (England) Order 2006, SI 2006/342, art 15. No exemption, however, may be granted from art 11 (importation of bees: see PARA 1113): art 15.

32 Bees Act 1980 s 1(7); see PARA 1112 text and note 9.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(5) ADMINISTRATION/(i) Central Administration/1115. Orders of the Secretary of State and the Welsh Ministers.

(5) ADMINISTRATION

(i) Central Administration

1115. Orders of the Secretary of State and the Welsh Ministers.

Subject and according to the provisions of the Animal Health Act 1981, the Secretary of State and the Welsh Ministers¹ are empowered to make orders generally for the better execution of the Act, or for the purpose of in any manner preventing the spreading of disease, and in particular for the various purposes set out in the Act, and for prescribing and regulating the payment and recovery of expenses². The other various powers to make orders under the Act are usually exercised in conjunction with this general power, but a limited number of orders take effect solely under the general power³.

Orders made under Acts repealed by the Animal Health Act 1981 have effect, *mutatis mutandis*, as if made under that Act⁴. Orders made under the Act are, with some exceptions⁵, statutory instruments⁶. Some of these, such as those declaring controlled or infected areas for foot-and-mouth disease⁷, are classified as local, and are not printed in the annual volumes of statutory instruments, but in almost every case notice of the order must be published in the London Gazette⁸. Local authorities must publish copies of orders sent to them by the Secretary of State or the Welsh Ministers⁹.

When so authorised by order of the Secretary of State or the Welsh Ministers, local authorities may make regulations for the purposes of the Act, or of orders of the Secretary of State or the Welsh Ministers¹⁰.

Where any power to make provisions by an order under the Animal Health Act 1981 does not include power to provide for its operation in or over territorial waters of the United Kingdom¹¹ adjacent to Great Britain¹², it is to be treated as including such power unless the context otherwise requires¹³.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 Animal Health Act 1981 s 1(a), (b). Orders made or having effect under the Act are referred to in the appropriate places in this part of the title. See also notes 3-17.

3 See the Foot-and-Mouth Disease (Packing Materials) Order of 1925, SR & O 1925/1178 (amended by SR & O 1926/42) (see PARA 1066); the Movement of Animals (Records) Order 1960, SI 1960/105 (amended by SI 1961/1493; SI 1977/944; SI 1989/879; SI 1989/2053; SI 1990/1868; SI 1995/11; SI 1995/12; SI 1996/28) (see PARA 1076 text and note 10); the Diseases of Animals (Approved Disinfectants) (England) Order 2007, SI 2007/448; and the Diseases of Animals (Approved Disinfectants) (Wales) Order 2007, SI 2007/2803.

4 See the Interpretation Act 1978 s 17(2)(b); and **STATUTES**.

5 I.e. orders under the Animal Health Act 1981 ss 14(2), 59(1).

6 Animal Health Act 1981 s 91(5).

7 See PARA 1072.

8 Animal Health Act 1981 s 91(1). This does not apply to an order under s 32 (slaughter) (see PARA 1089): s 91(4).

9 Animal Health Act 1981 s 91(2); and see also s 91(4) (note 8).

10 Animal Health Act 1981 s 2. As to local authority regulations see PARA 1123.

11 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. Neither the Channel Islands nor the Isle of Man is within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3.

12 As to the meaning of 'Great Britain' see PARA 830 note 21.

13 See the Animal Health and Welfare Act 1984 s 3.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(5) ADMINISTRATION/(i) Central Administration/1116. Licences.

1116. Licences.

Wherever by any order of the Secretary of State anything is prohibited either absolutely or conditionally, or is required to be done by any person, the Secretary of State may by licence from him, or signed by an inspector or other officer of the Department, authorise or exempt such person from such requirement with or without conditions¹.

¹ See the Animals (Miscellaneous Provisions) Order of 1927, SR & O 1927/290, art 2. As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(5) ADMINISTRATION/(i) Central Administration/1117. Revocation of orders.

1117. Revocation of orders.

Revocation of any order does not revive anything no longer in force; nor does it affect the previous operation of anything already duly done; nor does it affect any rights or liabilities already accrued, or any penalty, forfeiture or punishment already incurred, and legal proceedings may still be instituted after such revocation in respect of any offence against any such order prior to its revocation¹.

¹ Animals (Miscellaneous Provisions) Order of 1927, SR & O 1927/290, art 5(2). Cf the Interpretation Act 1978 s 16(1), Sch 2 para 3; and **STATUTES**.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(5) ADMINISTRATION/(i) Central Administration/1118. Stamp duty.

1118. Stamp duty.

No stamp duty is payable on any appointment, certificate, declaration, licence or thing under the Animal Health Act 1981, or an order of the Secretary of State or the Welsh Ministers or regulation of a local authority¹.

¹ Animal Health Act 1981 s 85. As to the construction of exemptions from stamp duty see **STAMP DUTIES AND STAMP DUTY RESERVE TAX**.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(5) ADMINISTRATION/(i) Central Administration/1119. Fees.

1119. Fees.

The Secretary of State or the Welsh Ministers¹ may by order made with Treasury approval prescribe fees payable with respect to any business under the Animal Health Act 1981 as may be specified in the order².

¹ As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see **PARAS 705-706**.

² Animal Health Act 1981 s 84(1). See the Diseases of Animals (Fees for the Testing of Disinfectants) Order 1991, SI 1991/1168 (amended by SI 1994/3141) (revoked in relation to England); the Poultry Breeding Flocks, Hatcheries and Processed Animal Protein (Fees) Order 1993, SI 1993/1998 (revoked in relation to England); the Poultry Breeding Flocks, Hatcheries and Animal By-Products (Fees) (England) Order 2002, SI 2002/2875; the Zoonoses and Animal By-products (Fees) (England) Regulations 2007, SI 2007/2074; the Zoonoses and Animal By-Products (Fees) (Wales) Regulations 2007, SI 2007/2496; and the Diseases of Animals (Approved Disinfectants) (Fees) (England) Order 2008, SI 2008/652.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) **PARA 733**. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) **PARA 196A**.

1119 Fees

NOTE 2--SI 2007/2074 replaced: Zoonoses and Animal By-Products (Fees) (England) Regulations 2009, SI 2009/2043. SI 2007/2496 replaced: Zoonoses and Animal By-Products (Fees) (Wales) Regulations 2008, SI 2008/2716 (amended by SI 2008/3153, SI 2009/2427). SI 2008/652 replaced: Diseases of Animals (Approved Disinfectants) (Fees) (England) Order 2010, SI 2010/739. See also the Poultry Compartments (Fees) (England) Order 2010, SI 2010/270.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(5) ADMINISTRATION/(i) Central Administration/1120. Inspectors.

1120. Inspectors.

The Secretary of State and the Welsh Ministers¹ appoint inspectors for the purposes of discharging many of their functions, and those of their departments, under the Animal Health Act 1981. In practice, many of these functions are carried out by divisional veterinary managers².

¹ As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

² See the Animal Health Orders (Divisional Veterinary Manager Amendment) Order 1995, SI 1995/2922, which amended a number of statutory instruments by replacing references to divisional veterinary officers and divisional veterinary inspectors with references to divisional veterinary managers.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1120 Inspectors

TEXT AND NOTE 2--SI 1995/2922 revoked in relation to England in consequence of the abolition of the post of divisional veterinary manager: SI 2009/2713.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(5) ADMINISTRATION/(ii) Local Administration/1121. Responsible local authorities.

(ii) Local Administration

1121. Responsible local authorities.

The local authorities responsible for executing and enforcing the Animal Health Act 1981 and every order of the Secretary of State or the Welsh Ministers so far as these are to be executed and enforced by the local authorities are (1) in London boroughs, the borough councils; (2) in the City of London (and for the purpose of the statutory provisions relating to imported animals¹, Greater London), the Common Council of the City of London; (3) in non-metropolitan counties, the county councils; (4) in county boroughs, the county borough councils; and (5) in metropolitan districts, the district councils². Where the district of a local authority comprises part of a port or aerodrome³ the Secretary of State or the Welsh Ministers may by order make a body other than that local authority the local authority for the purpose of the statutory provisions relating to imported animals⁴.

Normally the powers given by the Act to local authorities or their inspectors or officers are exercisable only within and in relation to their districts⁵. Local authorities, their inspectors and officers must give the Secretary of State or the Welsh Ministers such notices, reports, returns and information as he requires⁶.

Where a local authority fails to execute or enforce any provision of the Act or order of the Secretary of State or the Welsh Ministers, he may by order⁷ empower a named person to act instead⁸, without prejudice to the power or right of the Secretary of State or the Welsh Ministers or any other authority or any person to take any other proceedings for requiring the defaulting local authority to act⁹.

1 See PARA 1081 et seq.

2 Animal Health Act 1981 s 50(1), (2), (5) (amended by the Local Government Act 1985 s 16, Sch 8 para 18; the Environmental Protection Act 1990 s 151(2); and the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 61). See also the Isles of Scilly (Importation of Animals Regulations) Order 1949, SI 1949/2012. See generally **LOCAL GOVERNMENT** vol 69 (2009) PARA 1 et seq; **LONDON GOVERNMENT**.

Local authorities may borrow for the purposes of the Animal Health Act 1981: s 53(1).

3 As to the meaning of 'aerodrome' see PARA 868 note 2.

4 Animal Health Act 1981 s 50(4); see note 7. Such orders, being local in nature, are not recorded in this work.

5 Animal Health Act 1981 s 51.

6 Animal Health Act 1981 s 81.

7 Such orders are not statutory instruments: Animal Health Act 1981 s 91(5).

8 Animal Health Act 1981 s 59(1). The expenses of such persons must be paid by the defaulting local authority: see s 59(2), (3).

9 Animal Health Act 1981 s 59(4).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(5) ADMINISTRATION/(ii) Local Administration/1122. Appointment of local authority inspectors.

1122. Appointment of local authority inspectors.

Every local authority must appoint as many inspectors¹ and other officers as it thinks necessary for the execution and enforcement of the Animal Health Act 1981, and must assign to them such duties and may delegate to them such authority and discretion as it thinks fit². Wherever an inspector is so appointed, or ceases to be an inspector, and whenever there is any change in an inspector's name, address or district, the authority must forthwith report the fact to the Secretary of State or the Welsh Ministers³.

¹ As to inspectors' functions see PARAS 1096, 1110.

² Animal Health Act 1981 s 52. It has been held that a local authority is not liable for damages or to an order of mandamus (now a mandatory order) if it fails to appoint an inspector and disease breaks out: see *Mulcahy v Kilmacthomas Union Guardians* (1886) 18 LR Ir 200. It is, however, doubted whether this would be followed today. As to the default of local authorities see the Animal Health Act 1981 s 59; and PARA 1121.

³ Animals (Miscellaneous Provisions) Order of 1927, SR & O 1927/290, art 10 (amended by SR & O 1938/197). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(5) ADMINISTRATION/(ii) Local Administration/1123. Local authority regulations.

1123. Local authority regulations.

The Secretary of State or the Welsh Ministers¹ may make orders authorising local authorities to make regulations for any of the purposes of the Animal Health Act 1981².

A local authority making any such regulations must publish them in a newspaper circulating in its district or in such other manner as it considers best fitted to ensure publicity³. It must send two copies to the Department of the Environment, Food and Rural Affairs and, where the regulations affect animal movement, to railway undertakings⁴. A local authority regulation may be proved by producing a newspaper purporting to contain the regulation or a copy of the regulation purporting to be certified as a true copy by the authority's clerk⁵, and a regulation so proved is taken to have been duly made unless and until the contrary is proved⁶.

1 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

2 Animal Health Act 1981 s 2. Only regulations authorised by the Act or by an order of the Secretary of State or the Welsh Ministers may for the purposes of the Act be deemed local authority regulations: s 58(3). As to the validity of regulations see *Scott v Glasgow Corp* [1899] AC 470, HL; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 87.

3 Animals (Miscellaneous Provisions) Order of 1927, SR & O 1927/290, art 8(1).

4 Animals (Miscellaneous Provisions) Order of 1927, SR & O 1927/290, art 8(3). As to railway undertakings see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES**.

5 Animal Health Act 1981 s 58(1).

6 Animal Health Act 1981 s 58(2).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(5) ADMINISTRATION/(ii) Local Administration/1124. Provision of wharves and other places; acquisition of land.

1124. Provision of wharves and other places; acquisition of land.

A local authority may provide wharves, stations, lairs, sheds and other places for landing, reception, keeping, selling, slaughtering or disposing of imported and other animals, or carcases, fodder, litter¹, dung or other things². Such places are 'markets' within the Markets and Fairs Clauses Act 1847, the provisions of which relating to building, maintaining and holding markets, erecting and managing slaughterhouses, weighing goods, levying tolls, making byelaws, and accounts³, are incorporated with the Animal Health Act 1981⁴.

A local authority may charge for the use of such a wharf or other place provided by it⁵. Periodical returns of expenditure and receipts must be made to the Secretary of State or the Welsh Ministers⁶.

A local authority may buy or rent by agreement, or buy compulsorily if so authorised by the Secretary of State⁷, land within or without its district on which to build wharves or other places, and also for the burial of carcases⁸.

1 As to the meanings of 'carcase', 'fodder' and 'litter' see PARA 1072 note 11.

2 Animal Health Act 1981 s 54(1).

3 See the Markets and Fairs Clauses Act 1847 ss 10-50; and **MARKETS, FAIRS AND STREET TRADING**.

4 Animal Health Act 1981 s 54(2), (3). In *Scott v Glasgow Corp* [1899] AC 470, HL, it was held that a byelaw prohibiting the use of rings at a public market for private sales was not ultra vires.

5 Animal Health Act 1981 s 54(4). Sums charged for the use of such a place must be carried to a separate account and applied in payment of interest and repayment of principal on money borrowed and, subject thereto, to discharge of expenses: s 54(5). As to the meaning of 'use' in this context see *City of London Corp v British Caledonian Airways Ltd* [1980] 2 All ER 297, affd (1981) Times, 21 May, CA.

6 Animal Health Act 1981 s 54(6). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

7 For the procedure on compulsory acquisition, see the Acquisition of Land Act 1981; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 556 et seq.

8 See the Animal Health Act 1981 s 55 (amended by the Acquisition of Land Act 1981 s 34, Sch 4 para 32, Sch 6).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/11. ANIMAL HEALTH/(5) ADMINISTRATION/(ii) Local Administration/1125. Carcasses washed ashore.

1125. Carcasses washed ashore.

Local authorities must pay the expenses of the burial or destruction of carcasses¹ washed ashore, when such burial or destruction is carried out under the direction of a receiver of wreck with authority from the Secretary of State or the Welsh Ministers², but may recover the expenses from the owner of the vessel from which the carcase was thrown or washed³.

1 As to the meaning of 'carcase' see PARA 1072 note 11. This provision is not restricted to diseased carcasses or the carcasses of animals shipped alive; it applies to a cargo of frozen meat: *The Suevic* [1908] P 292.

2 See the Animal Health Act 1981 s 57(1), (2).

3 Animal Health Act 1981 s 57(3).

UPDATE

1040-1125 Animal Health

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(1) THE LEGISLATION AND REGULATION OF THE PROFESSION/1126. Introduction.

12. VETERINARY SURGEONS AND SURGERY

(1) THE LEGISLATION AND REGULATION OF THE PROFESSION

1126. Introduction.

'Veterinary surgery' means the art and science of veterinary surgery and medicine, and is taken to include (1) the diagnosis of diseases in and injuries to animals¹, including tests performed on animals for diagnostic purposes; (2) the giving of advice based upon such diagnosis; (3) medical or surgical treatment of animals; and (4) the performance of surgical operations on animals². The profession of veterinary surgery is regulated by the charters³ from time to time granted to the Royal College of Veterinary Surgeons and by the Veterinary Surgeons Act 1966. Some of the provisions regulating the registration⁴ and practice⁵ of, and disciplinary powers over⁶, veterinary surgeons are to be found in subordinate legislation. Powers to make orders have been conferred on the Privy Council and on the Secretary of State⁷, and must be exercised by statutory instrument⁸. Any power conferred⁹ on the Privy Council may be exercised by any two or more of its members¹⁰.

The law forbids the practice of veterinary surgery except by persons registered in the register of veterinary surgeons¹¹ or in the supplementary veterinary register¹², but for this purpose 'veterinary surgery' has been given a limited meaning to exclude certain minor operations which certain unqualified persons may perform¹³.

1 'Animals' includes birds and reptiles: Veterinary Surgeons Act 1966 s 27(1).

2 Veterinary Surgeons Act 1966 s 27(1).

3 As to these charters see PARA 1147.

4 As to registration see PARA 1133 et seq.

5 As to practice see PARA 1129 et seq. For other statutory provisions relevant to the practice of veterinary surgery see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 10.

6 As to discipline see PARA 1157 et seq.

7 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

8 Veterinary Surgeons Act 1966 s 25(3). Any statutory instrument made in the exercise of any power conferred by s 1(4), s 3, s 19(4) or s 21 is subject to annulment by resolution of either House of Parliament: s 25(5). The draft of an order under s 19(5) must be approved by both Houses of Parliament: s 25(4).

9 ie conferred by the Veterinary Surgeons Act 1966.

10 Veterinary Surgeons Act 1966 s 23(1). Any document purporting to be an instrument of appointment or approval made by the Privy Council under the Veterinary Surgeons Act 1966 or any other instrument so made, and purporting to be signed by the Clerk of the Privy Council or other authorised person, is evidence of the fact that the instrument was so made and of its terms: s 23(2).

11 As to this register see PARA 1133.

12 As to this register see PARA 1134.

13 See the Veterinary Surgeons Act 1966 s 19(3), (4), Sch 3; and PARA 1129.

UPDATE**1126-1130 Introduction ... Use of descriptions as to professional status**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1126 Introduction

TEXT AND NOTES--See Provision of Services Regulations 2009, SI 2009/2999; and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 385A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(1) THE LEGISLATION AND REGULATION OF THE PROFESSION/1127. Membership and functions of the Royal College of Veterinary Surgeons.

1127. Membership and functions of the Royal College of Veterinary Surgeons.

Any person who has obtained a university degree in veterinary surgery at certain recognised universities in the United Kingdom and the Republic of Ireland or who has passed examinations in veterinary surgery held by the Royal College of Veterinary Surgeons at other universities in the United Kingdom¹, or who holds Commonwealth or foreign qualifications² in veterinary surgery and has satisfied the council of the college by examination or otherwise, that he has the requisite knowledge and skill to fit him for practising veterinary surgery in the United Kingdom³, is entitled to be registered in the register of veterinary surgeons⁴ and on being so registered becomes a member of the college⁵. Similarly, a person who is a national of a member state of the European Community and holds a recognised European qualification is generally entitled to be so registered, and thereupon becomes a member of the college⁶.

The management of the college is in the hands of its council⁷, which appoints the officers of the college⁸, controls the arrangements for registration and the annual fees payable by persons on the registers⁹, has supervisory functions over the courses of study in veterinary surgery in the United Kingdom and the Republic of Ireland and holds examinations at some universities¹⁰. Through its disciplinary committee it exercises certain powers relating to the removal or suspension of names from the registers¹¹.

The college maintains a list of veterinary nurses; and persons on that list are permitted in certain circumstances to carry out specified veterinary procedures¹².

1 See PARAS 1136-1137.

2 'Qualification' means any diploma, degree, fellowship, membership, licence, authority to practise, letters testimonial, certificate or other status or document granted by any university, corporation, college or other body or by any department of, or persons acting under the authority of, the government of any country or place: Veterinary Surgeons Act 1966 s 27(1). 'Commonwealth qualification' means a qualification granted in a place outside the United Kingdom which is within the Commonwealth, and 'foreign qualification' means a qualification granted in a place outside the United Kingdom and outside the Commonwealth: s 27(1) (definitions substituted by SI 2003/2919). See further PARA 1138. Note, however, that a recognised European qualification (see PARA 1139) entitles the holder to registration in its own right, not as a foreign qualification: see the Veterinary Surgeons Act 1966 s 6(6) (substituted by SI 2003/2919).

3 See PARA 1138.

4 See PARA 1133.

5 See PARAS 1136, 1138.

6 See PARA 1139.

7 See PARA 1149.

8 See PARAS 1152-1153.

9 See PARAS 1142, 1146.

10 See PARA 1155.

11 See PARA 1157 et seq.

12 See PARA 1129 text and notes 16-19.

UPDATE

1126-1130 Introduction ... Use of descriptions as to professional status

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

NOTE 2--Definitions of 'Commonwealth qualification' and 'foreign qualification' substituted: SI 2008/1824.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(1) THE LEGISLATION AND REGULATION OF THE PROFESSION/1128. Functions relating to cruelty to animals and similar matters.

1128. Functions relating to cruelty to animals and similar matters.

Enactments relating to the protection of animals from suffering, disease and cruelty restrict and control the manner of performance of operations on animals, and impose duties on veterinary surgeons¹.

Veterinary inspectors may be appointed to inspect dairy cattle². A local authority may authorise a veterinary surgeon to enter and inspect premises used as riding establishments, examine horses found on them, and make a report³, and may authorise its officers or a veterinary surgeon or veterinary practitioner to inspect pet shops⁴, animal boarding establishments⁵, premises licensed for the breeding of dogs⁶, and zoos⁷.

A veterinary surgeon who, in the course of his practice, finds an animal or a carcase of an animal that is diseased⁸, and a veterinary surgeon who examines an animal or its carcase affected with or suspected of rabies⁹, must notify the police.

1 For provisions as to cruelty to animals, and as to diseases of animals, see PARAS 817 et seq, 1040 et seq. As to the protection of all living vertebrate animals used for experimental or other scientific purposes see PARA 875 et seq.

2 See **FOOD** vol 18(2) (Reissue) PARA 347.

3 See PARAS 940-941.

4 See PARA 937.

5 See PARA 938.

6 See PARA 932.

7 See PARA 944 et seq.

8 See PARA 1042 as to the meaning of 'disease' and PARA 1049 as to the notification.

9 See PARA 1057.

UPDATE

1126-1130 Introduction ... Use of descriptions as to professional status

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(1) THE LEGISLATION AND REGULATION OF THE PROFESSION/1129. Restriction on practice by unqualified persons.

1129. Restriction on practice by unqualified persons.

Any person who is not a registered veterinary surgeon¹ or a registered veterinary practitioner² and who practises or holds himself out as practising or as being prepared to practise veterinary surgery³, is liable on summary conviction to a fine not exceeding the prescribed sum⁴ and on conviction on indictment to a fine⁵. This provision does not, however, operate to prohibit:

- 284 (1) the carrying out of any procedure duly authorised under the Animals (Scientific Procedures) Act 1986⁶;
- 285 (2) any treatment given to an animal⁷ by its owner or another member of his household or by a person in the employment of the owner or any other member of such a household⁸;
- 286 (3) any medical treatment or any minor surgery (not involving entry into a body cavity) done otherwise than for reward to an animal used in agriculture, as defined in the Agriculture Act 1947⁹, by the owner of the animal or by a person engaged or employed in caring for such animals¹⁰;
- 287 (4) emergency first aid for saving life or relieving pain¹¹;
- 288 (5) the performance by persons of or over the age of 18 of operations of castration or caponising, whether by chemical means or otherwise; the docking of a lamb's tail; the amputation of a dog's dew claws before its eyes are open¹²;
- 289 (6) the performance of castration or caponising, or docking a lamb's tail, by any person of the age of 17 undergoing instruction in animal husbandry if certain conditions¹³ are fulfilled¹⁴;
- 290 (7) the disbudding of a calf by a person undergoing instruction, if those same conditions are fulfilled¹⁵;
- 291 (8) any medical treatment or any minor surgery (not involving entry into a body cavity) to any animal by a veterinary nurse¹⁶ or student veterinary nurse¹⁷ if certain conditions¹⁸ are complied with¹⁹;
- 292 (9) the performance by a registered medical practitioner²⁰ of an operation on an animal for the purpose of removing an organ or tissue for use in the treatment of human beings²¹;
- 293 (10) the carrying out or performance of any treatment, test or operation by a registered medical practitioner or a registered dentist²² at the request of a registered veterinary surgeon or a registered veterinary practitioner²³;
- 294 (11) the carrying out or performance of any minor treatment, test or operation specified in an order made by the Secretary of State²⁴ after consultation with the Council of the Royal College of Veterinary Surgeons, so long as any conditions so specified are complied with²⁵;
- 295 (12) the carrying out or performance, under regulations made by the council, of any prescribed veterinary treatment, test or operation, subject to compliance with certain prescribed conditions, by specified classes of students of veterinary surgery²⁶.

Nothing in heads (2) to (8) above authorises:

- 296 (a) the castration of (i) a horse, pony, ass or mule; (ii) a bull, boar or goat which has reached two months; (iii) a ram which has reached three months; or (iv) a cat or dog;
- 297 (b) the spaying of a cat or dog;
- 298 (c) the removal of any part of a deer's antlers before the velvet is frayed and the greater part of it has been shed;
- 299 (d) the desnooding of a turkey which has reached 21 days;
- 300 (e) the removal of the combs of any poultry which has reached 72 hours;
- 301 (f) the cutting of the toes of a domestic fowl or turkey which has reached 72 hours;
- 302 (g) the performance of a vasectomy or electro-ejaculation on any animal or bird kept for food, wool, skin or fur or for use in farming;
- 303 (h) the removal of the supernumerary teats of a calf which has reached three months; or
- 304 (i) the dehorning or disbudding of a sheep or goat, except the trimming of the insensitive tip of an ingrowing horn which could cause pain or distress if untreated²⁷.

The docking of a puppy's tail may only be carried out by a veterinary surgeon²⁸.

- 1 As to registration see PARA 1133 et seq.
 - 2 As to veterinary practitioners see PARA 1134.
 - 3 As to the meaning of 'veterinary surgery' see PARA 1126.
 - 4 As to the prescribed sum see PARA 739 note 3.
 - 5 Veterinary Surgeons Act 1966 s 19(1) (amended by virtue of the Magistrates' Courts Act 1980 s 32(2)).
 - 6 Veterinary Surgeons Act 1966 s 19(4)(a) (amended by the Animals (Scientific Procedures) Act 1986 s 27, Sch 3 para 5). As to procedures authorised by the Animals (Scientific Procedures) Act 1986 see PARA 875 et seq.
 - 7 As to the meaning of 'animals' see PARA 1126 note 1.
 - 8 Veterinary Surgeons Act 1966 s 19(4)(b), Sch 3 Pt I para 1 (Sch 3 substituted by SI 1988/526). Membership of a household is a question of fact and degree: see *Simmons v Pizzey* [1979] AC 37 at 59, [1977] 2 All ER 432 at 441, HL, per Lord Hailsham of St Marylebone; applied in *Hackney London Borough v Eziduma* [1981] 3 All ER 438; it may not lapse by temporary separation: *Santos v Santos* [1972] Fam 247, [1972] 2 All ER 246, CA.
- After consultation with the Council of the Royal College of Veterinary Surgeons (see PARA 1127) and with persons appearing to represent interests so appearing to be substantially affected, the Secretary of State may by order amend the provisions of the Veterinary Surgeons Act 1966 Sch 3: s 19(5). See also PARA 1126 note 8. Any such order may be varied or revoked by a subsequent order similarly made: s 19(6).
- 9 See **AGRICULTURAL LAND** vol 1 (2008) PARA 324.
 - 10 Veterinary Surgeons Act 1966 Sch 3 Pt I para 2 (as substituted: see note 8; Sch 3 Pt I paras 2, 4 subsequently amended by SI 1991/1412).
 - 11 Veterinary Surgeons Act 1966 Sch 3 Pt I para 3 (as substituted: see note 8).
 - 12 Veterinary Surgeons Act 1966 Sch 3 Pt I para 4 (as substituted and amended: see notes 8, 10). The effect of one such amendment is that the docking of a puppy's tail may now only be carried out by a veterinary surgeon: Sch 3 Pt I para 4(c) (repealed by SI 1991/1412).
 - 13 The instruction in animal husbandry is given by a registered veterinary surgeon or a registered veterinary practitioner and the operation is performed under his direct personal supervision; or the instruction is given at a recognised institution and the operation performed under the direct personal supervision of a person appointed to give instruction there: Veterinary Surgeons Act 1966 Sch 3 Pt I para 5(a), (b) (as substituted: see note 8). 'Recognised institution' means (1) an institution maintained or assisted by a local education authority; (2) an institution within the further education sector within the meaning of the Further and Higher Education Act

1992 s 91(3) (see **EDUCATION** 15(2) (2006 Reissue) PARA 579); (3) any other institution providing higher or further education (or both) for which a grant is paid by the Secretary of State; or (4) an institution recognised for the present purpose by the Secretary of State: Sch 3 Pt I para 5 (as so substituted; definition amended by the Education Reform Act 1988 s 237, Sch 12 para 66; the Further and Higher Education Act 1992 s 93, Sch 8 Pt II para 70; and the Education Act 1996 s 582(1), Sch 37 para 12).

14 Veterinary Surgeons Act 1966 Sch 3 Pt I para 5 (as substituted and amended: see notes 8, 13).

15 Veterinary Surgeons Act 1966 Sch 3 Pt I para 5 (as substituted and amended: see notes 8, 13).

16 'Veterinary nurse' means a nurse whose name is entered in the list of veterinary nurses maintained by the college: Veterinary Surgeons Act 1966 Sch 3 Pt I para 6 (PARAS 6, 7 added by SI 1991/1412; Veterinary Surgeons Act 1966 Sch 3 Pt I para 6 substituted by SI 2002/1479).

As to the recognition of the qualifications of nationals of other member states in veterinary nursing see the European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781.

17 'Student veterinary nurse' means a person enrolled under bye-laws made by the Council of the Royal College of Veterinary Surgeons for the purpose of undergoing training as a veterinary nurse at an approved training and assessment centre or a veterinary practice approved by such a centre; 'approved training and assessment centre' means a centre approved by the council for the purpose of training and assessing student veterinary nurses: Veterinary Surgeons Act 1966 Sch 3 Pt I para 7 (as added: see note 16).

18 In respect of a veterinary nurse the conditions are that (1) the animal is, for the time being, under the care of a registered veterinary surgeon or veterinary practitioner and the medical treatment or minor surgery is carried out by the veterinary nurse at his direction; (2) the registered veterinary surgeon or veterinary practitioner is the employer or is acting on behalf of the employer of the veterinary nurse; and (3) the registered veterinary surgeon or veterinary practitioner directing the medical treatment or minor surgery is satisfied that the veterinary nurse is qualified to carry out the treatment or surgery: Veterinary Surgeons Act 1966 Sch 3 Pt I para 6(a)-(c) (as added and substituted: see note 16).

In respect of a student veterinary nurse the conditions are that (a) the animal is, for the time being, under the care of a registered veterinary surgeon or veterinary practitioner and the medical treatment or minor surgery is carried out by the student veterinary nurse at his direction and in the course of the student veterinary nurse's training; (b) the treatment or surgery is supervised by a registered veterinary surgeon, veterinary practitioner or veterinary nurse and, in the case of surgery, the supervision is direct, continuous and personal; and (c) the registered veterinary surgeon or veterinary practitioner is the employer or is acting on behalf of the employer of the student veterinary nurse: Sch 3 Pt I para 7(a)-(c) (as added: see note 17).

19 Veterinary Surgeons Act 1966 Sch 3 Pt I paras 6, 7 (as added: see note 16).

20 As to registered medical practitioners see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 1 et seq.

21 Veterinary Surgeons Act 1966 s 19(4)(c).

22 As to registered dentists see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 417 et seq.

23 Veterinary Surgeons Act 1966 s 19(4)(d).

24 As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

25 Veterinary Surgeons Act 1966 s 19(4)(e). See also PARA 1126 note 8. Any order under s 19(4)(e) may be varied or revoked by a subsequent order similarly made: s 19(6).

Exemption has been given to certain treatments of animals by physiotherapy given in certain circumstances, and some tests and minor operations on certain fowls and turkeys (see the Veterinary Surgery (Exemptions) Order 1962, SI 1962/2557 (amended by SI 1973/308; SI 1982/1627; SI 1983/6; and SI 2002/1646 in part on 25 June 2002, in part on 1 January 2003 and in part on 1 January 2011)); to the vaccination of poultry with any licensed vaccine (see the Veterinary Surgery (Exemptions) Order 1973, SI 1973/308); to the taking of blood samples from farm animals and poultry for use for prescribed purposes (see the Veterinary Surgery (Blood Sampling) Order 1983, SI 1983/6 (amended by SI 1988/1090; and SI 1990/2217)); to the administration of epidural anaesthesia (see the Veterinary Surgery (Epidural Anaesthesia) Order 1992, SI 1992/696); to the use of rectal ultrasound scanners (see the Veterinary Surgery (Rectal Ultrasound Scanning of Bovines) Order 2002, SI 2002/2584); to the vaccination of animals against foot-and-mouth disease (see the Veterinary Surgery (Vaccination Against Foot-and-Mouth Disease) Order 2004, SI 2004/2780); to the testing for tuberculosis in bovines (see the Veterinary Surgery (Testing for Tuberculosis in Bovines) Order 2005, SI 2005/2015); and to the artificial insemination of cows and mares (see the Veterinary Surgery (Artificial Insemination) Order 2007, SI 2007/1315 (amended by SI 2007/1767)).

26 Veterinary Surgeons Act 1966 s 19(3). In this regard:

- 1 (1) students of veterinary surgery who have attained the age of 18 years, are attending full-time university or veterinary school courses in the United Kingdom or elsewhere leading to a veterinary qualification (see PARA 1136 et seq), and have entered upon that part of the curriculum which deals with clinical studies, and
- 2 (2) students holding a veterinary qualification granted outside the United Kingdom and recognised by the Royal College who are attending a full-time course at a university or veterinary school or at a veterinary practice in the United Kingdom for the purpose of entering for the MRCVS examination,

may examine animals and carry out tests, treatment and surgical operations under varying degrees of supervision: see the Veterinary Surgeons (Practice by Students) Regulations 1981 (contained in the Veterinary Surgeons (Practice by Students) Regulations Order of Council 1981, SI 1981/988, Schedule) (amended by SI 1995/2397).

27 Veterinary Surgeons Act 1966 Sch 3 Pt II (as substituted: see note 8).

28 See note 12.

UPDATE

1126-1130 Introduction ... Use of descriptions as to professional status

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1129 Restriction on practice by unqualified persons

NOTE 16--Definition of 'veterinary nurse' substituted: SI 2008/1824. SI 2007/2781 amended: SI 2008/2683, SI 2009/1587, SI 2009/1885.

NOTE 25--SI 2007/1315 further amended: SI 2009/2769. See also the Veterinary Surgery (Wing and Web Tagging) Order 2009, SI 2009/1217.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(2) THE PRACTICE OF VETERINARY SURGERY/1130. Use of descriptions as to professional status.

(2) THE PRACTICE OF VETERINARY SURGERY

1130. Use of descriptions as to professional status.

A person is guilty of an offence for which he is liable on summary conviction to a fine not exceeding the prescribed sum¹ or on conviction on indictment to a fine² if, not being registered in the register of veterinary surgeons³, he takes or uses⁴ the title 'veterinary surgeon' or any name, title, addition or description implying that he is so registered⁵; or if, not being registered in that register or in the supplementary veterinary register⁶, he takes or uses the title 'veterinary practitioner' or any name, title, addition or description implying that he is a practitioner of or qualified to practise⁷ veterinary surgery⁸. Without prejudice to these provisions, a person is guilty of an offence carrying a like penalty⁹ if he uses, in connection with any business carried on by him or at any premises at which such a business is carried on, a description implying that he or any person acting for the purposes of the business possesses any veterinary qualifications which he does not in fact possess¹⁰.

Where either of these offences by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to neglect on the part of any officer of the body corporate or person purporting to act as such, he, as well as the body corporate, is deemed to be guilty of the offence and may be proceeded against and punished accordingly¹¹.

1 Veterinary Surgeons Act 1966 s 20(4)(a) (amended by virtue of the Magistrates' Courts Act 1980 s 32). As to the prescribed sum see PARA 739 note 3.

2 Veterinary Surgeons Act 1966 s 20(4)(b).

3 As to the register see PARA 1133.

4 As to the meaning of 'takes or uses' see *Brown v Whitlock* (1903) 67 JP 451, DC; *Robertson v Hawkins* [1913] 1 KB 57, DC; *Blain v King* [1918] 2 KB 30, DC.

5 Veterinary Surgeons Act 1966 s 20(1).

6 As to this register see PARA 1134.

7 In any greater extent than is authorised by or under the Veterinary Surgeons Act 1966 s 19(3) (as to which see PARA 1129): s 20(2).

8 Veterinary Surgeons Act 1966 s 20(4). As to the meaning of 'veterinary surgery' see PARA 1126. The Veterinary Surgeons Act 1881 s 17 (repealed), had made it an offence *inter alia* for any unregistered person to take or use the title 'veterinary surgeon' or 'veterinary practitioner' or any name, title, addition or description stating that he was a veterinary surgeon or a practitioner of veterinary surgery or of any branch of it, or was specially qualified to practise it. It was held that a shoeing smith who described his premises as a 'veterinary forge' had taken a description stating that he was specially qualified to practise a branch of veterinary surgery: *Royal College of Veterinary Surgeons v Robinson* [1892] 1 QB 557. The authority of this decision was recognised somewhat reluctantly in *Royal College of Veterinary Surgeons v Collinson* [1908] 2 KB 248, where the use by an unregistered person of the words 'canine specialist' was held to infringe the prohibition. Cases in which it was held that there was no infringement are *Veterinary College v Groves* (1893) 57 JP 505 ('pharmaceutical and veterinary chemist'), and *Royal College of Veterinary Surgeons v Kennard* [1914] 1 KB 92 ('canine surgery'); but see now the Veterinary Surgeons Act 1966 s 20(3): text to note 10.

9 See text and notes 1-2.

10 Veterinary Surgeons Act 1966 s 20(3). As to the meaning of 'qualification' see PARA 1127 note 2. Where a limited company used the description 'Churchill's Veterinary Sanatorium Ltd', and inscribed on its shop window the words 'James Churchill, Managing Director, MD, USA, Specialist, Dogs and Cats Boarded. Advice Gratis', it was held that there was a representation that James Churchill, the managing director, was specially qualified to practise a branch of veterinary surgery: *A-G v Churchill's Veterinary Sanatorium Ltd* [1910] 2 Ch 401.

11 Veterinary Surgeons Act 1966 s 20(5).

UPDATE

1126-1130 Introduction ... Use of descriptions as to professional status

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(2) THE PRACTICE OF VETERINARY SURGERY/1131. Liability for negligence and breach of warranty.

1131. Liability for negligence and breach of warranty.

A veterinary surgeon or practitioner, like other professional men, is liable for any damage caused by his negligence¹. In addition, where he supplies or administers for reward a substance such as a serum or toxoid, he impliedly warrants that the substance is reasonably fit for the purpose for which it is required, namely, for administration to animals².

¹ For the cases on medical negligence see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 196 et seq. In *Chute Farms Ltd v Curtis* (1961) Times, 10 October, Elwes J held that a veterinary surgeon was vicariously liable for the negligence of his assistant who failed to inject a thoroughbred yearling colt with anti-tetanus serum after it had injured its foot. See also *Calver v Westwood Veterinary Group* (2000) 58 BMLR 194, [2001] Lloyd's Rep Med 20, CA, where the evidence given by a veterinary surgeon, which conflicted with the expert evidence given by two other veterinary surgeons, did not give rise to liability in negligence; and *Glyn (t/a Priors Farm Equine Veterinary Surgery) v McGarel-Groves* [2006] EWCA Civ 998, [2006] All ER (D) 207 (Jul), where the duty of care of a veterinary surgeon who had been instructed to attend while another veterinary surgeon treated a horse was held to include not only a duty to observe the treatment but also a duty to satisfy himself that he knew precisely what treatment was to be carried out, so as to ensure that nothing remotely inappropriate occurred.

² *Dodd and Dodd v Wilson and McWilliam* [1946] 2 All ER 691. As to breach of warranty generally see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 307 et seq.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(2) THE PRACTICE OF VETERINARY SURGERY/1132. Veterinary medicinal products.

1132. Veterinary medicinal products.

The authorisation, manufacture, classification, distribution and administration of veterinary medicinal products are subjects of secondary legislation¹, which is considered elsewhere in this work².

1 See the Veterinary Medicines Regulations 2007, SI 2007/2539. In general, a veterinary medicinal product must have a marketing authorisation granted by the Secretary of State before being placed on the market (see reg 4, Sch 1); a veterinary medicinal product must be manufactured by a person holding a manufacturing authorisation (reg 5, Sch 2); the supply and possession of veterinary medicinal products is regulated (reg 7, Sch 3); a veterinary medicinal product may only be administered as specified in its marketing authorisation or, in the case of administration by a veterinary surgeon, administration under the 'cascade' (reg 8, Sch 4); the bringing of veterinary medicinal products into the United Kingdom is controlled (reg 9); as are advertising (regs 10-12) and wholesale dealing (reg 13).

If there is no authorised veterinary medicinal product in the United Kingdom for a condition, the veterinary surgeon responsible for the animal may, in particular to avoid unacceptable suffering, treat the animal concerned with the following (the 'cascade'), cascaded in the following order (Sch 4 para 1(2)):

- 3 (1) a veterinary medicinal product authorised in the United Kingdom for use with another animal species, or for another condition in the same species (Sch 4 para 1(2)(a)); or
- 4 (2) if and only if there is no such product that is suitable, either (a) a human medicinal product authorised in the United Kingdom; or (b) a veterinary medicinal product not authorised in the United Kingdom but authorised in another member state for use with any animal species (in the case of a food-producing animal, it must be a food-producing species) (Sch 4 para 1(2)(b)); or
- 5 (3) if and only if there is no such product that is suitable, a veterinary medicinal product prepared extemporaneously by a pharmacist, a veterinary surgeon or a person holding a manufacturing authorisation authorising the manufacture of that type of product (Sch 4 para 1(2)(c)).

2 See **MEDICINAL PRODUCTS AND DRUGS**.

UPDATE

1132 Veterinary medicinal products

TEXT AND NOTES--SI 2007/2539 replaced: see now the Veterinary Medicines Regulations 2009, SI 2009/2297; see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARAS 34A-34D.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(3) REGISTRATION AND QUALIFICATIONS/(i) The Registers/1133. The register of veterinary surgeons.

(3) REGISTRATION AND QUALIFICATIONS

(i) The Registers

1133. The register of veterinary surgeons.

The register of veterinary surgeons contains the names, addresses and qualifications¹ of all persons entitled to be registered under the provisions of the Veterinary Surgeons Act 1966². It consists of four lists: (1) the 'general list', which is of persons entitled to be registered as holders of veterinary degrees of, or on passing appropriate examinations held by the Royal College of Veterinary Surgeons in, universities in the United Kingdom, or as the holders of specified European qualifications³; (2) the 'Commonwealth list', which is of persons entitled to be registered as holding some Commonwealth qualification⁴; (3) the 'foreign list', which is of persons so registered as holding some foreign qualification⁵; and (4) the 'temporary list', which is of persons whom the Council of the Royal College of Veterinary Surgeons permits to practise on a temporary basis⁶.

1 As to the meaning of 'qualification' see PARA 1127 note 2.

2 Veterinary Surgeons Act 1966 s 2(1). The register was originally made and maintained under the Supplemental Royal Charter of 1876 and continued by the Veterinary Surgeons Act 1881 s 3(1) (repealed).

3 Veterinary Surgeons Act 1966 s 2(2)(a) (substituted by SI 2003/2919). As to qualifications for persons on the general list see the Veterinary Surgeons Act 1966 ss 3, 4, 5A, 5B; and PARAS 1136-1137, 1139. In *Plenderleith v Royal College of Veterinary Surgeons* [1996] 1 WLR 224, PC, a veterinary surgeon who employed two persons who held recognised European qualifications and who had applied for registration but had not yet been registered, was not guilty of disgraceful conduct. As to disgraceful conduct and disciplinary proceedings see PARA 1157 et seq.

4 Veterinary Surgeons Act 1966 s 2(2)(b). As to the meaning of 'Commonwealth qualification' see PARA 1127 note 2. As to qualification for registration as a Commonwealth practitioner see PARA 1138.

5 Veterinary Surgeons Act 1966 s 2(2)(c). As to the meaning of 'foreign qualification' see PARA 1127 note 2. As to qualification for registration as a foreign practitioner see PARA 1138.

6 Veterinary Surgeons Act 1966 s 2(2)(d). As to the council's power to permit persons to practise on a temporary basis see s 7; and PARA 1140.

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1133 The register of veterinary surgeons

TEXT AND NOTES--Head (5) the 'visiting European list', which is of persons entitled to be so registered under the Veterinary Surgeons Act 1966 Sch 1B: s 2(2)(e) (added by SI 2008/1824).

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(3) REGISTRATION AND QUALIFICATIONS/(i) The Registers/1134. The supplementary veterinary register.

1134. The supplementary veterinary register.

The supplementary veterinary register¹ contains the names and addresses of the following persons (who are known as 'veterinary practitioners'): (1) persons registered in this register immediately before the commencement of the Veterinary Surgeons Act 1966²; (2) persons at some previous time registered in this register who were not so registered immediately before the commencement of the 1966 Act, but whose names have been restored to the register on a direction of the disciplinary committee of the Royal College of Veterinary Surgeons³; and (3) persons who for an aggregate of not less than seven out of the ten years immediately preceding 2 December 1965 held a licence under the provision of the Veterinary Surgeons Act 1948⁴ permitting the licensing of employees of certain societies and institutions providing free treatment for animals⁵.

1 See the Veterinary Surgeons Act 1966 s 8.

2 Veterinary Surgeons Act 1966 s 8(1)(a). This head of registration is of little practical importance, since the 1966 Act was, for present purposes, fully in force by 15 November 1967, and the register under the Veterinary Surgeons Act 1948 contained the names of certain persons of good personal character who, for a period of not less than seven out of the ten years preceding 30 July 1949, had been, as their principal means of livelihood, diagnosing diseases of animals and giving medical and surgical treatment to animals: s 6(2) (repealed).

3 Veterinary Surgeons Act 1966 s 8(1)(b). As to restoration to the register see s 18: and PARA 1175.

4 Under the Veterinary Surgeons Act 1948 s 7 (repealed). Licences were granted under s 7 by the Minister of Agriculture, Fisheries and Food to employees of certain societies and institutions wholly supported by voluntary contributions or endowments or both, and providing free medical or surgical treatment for animals, where the minister was satisfied that the society or institution could not obtain the services of an adequate number of veterinary surgeons. A person holding such a licence may not, however, practise veterinary surgery otherwise than as an employee of any such society or institution (Veterinary Surgeons Act 1966 s 8(2)(a)) or with permission granted by the Council of the Royal College of Veterinary Surgeons and subject to such restrictions as the council may impose (s 8(2)(b)). A certificate purporting to be a certificate of the Secretary of State stating that any person held, or did not hold, a licence under the Veterinary Surgeons Act 1948 s 7 for a period specified in the certificate is, for the purposes of registration, conclusive of the matters stated in it: Veterinary Surgeons Act 1966 s 8(5). As to the Secretary of State, and the transfer of functions to the Welsh Ministers, see PARAS 705-706.

5 Veterinary Surgeons Act 1966 s 8(1)(c), (2). The entry in the supplementary register against the name of such a person must state whether he is the employee of any such society or institution (s 8(3)(a)), whether he has been granted permission to practise veterinary surgery (s 8(3)(b)) and any restrictions subject to which he may practise it (s 8(3)(c)). As to the meaning of 'veterinary surgery' see PARA 1126. If he fails to comply with any restrictions subject to which he is so registered, the council may cause his name to be removed from the register: s 8(4).

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue)
PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(3) REGISTRATION AND QUALIFICATIONS/(i) The Registers/1135. Publication of the registers.

1135. Publication of the registers.

The register of veterinary surgeons¹ and the supplementary veterinary register² are kept by the registrar of the Royal College of Veterinary Surgeons³. The Council of the Royal College of Veterinary Surgeons⁴ must cause the registers to be printed and published as often as it thinks fit⁵. Copies of the registers purporting to be printed and published by the council, as altered by any alterations purporting to be printed and published by the council, are evidence that the persons specified in the registers are registered in them and that persons not named in them are not registered⁶. If a name does not appear in a copy of the register as altered, a certified copy under the hand of the registrar of the entry relating to that person in the register concerned is, however, evidence that the name is on that register⁷.

1 See PARA 1133.

2 See PARA 1134.

3 Veterinary Surgeons Act 1966 s 9(1), (8). As to the registrar see PARA 1153. The registrar must from time to time insert in the registers any alteration in the name or address of any registered person which may come to his knowledge: s 9(7), (8). He must perform such other duties in connection with the registers as the council directs, and must act on such evidence as in each case appears sufficient: s 9(2), (8).

4 As to the Royal College of Veterinary Surgeons see PARA 1147, and as to the council see PARA 1149 et seq.

5 Veterinary Surgeons Act 1966 s 9(3), (8). If in any year either register is not published, the council must cause any alterations in the entries in that register which have been made since its last publication to be printed and published within that year: s 9(4), (8).

6 Veterinary Surgeons Act 1966 s 9(5), (8).

7 Veterinary Surgeons Act 1966 s 9(6), (8).

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(3) REGISTRATION AND QUALIFICATIONS/(ii) Qualifications for the Register of Veterinary Surgeons/1136. Qualifications for the register.

(ii) Qualifications for the Register of Veterinary Surgeons

1136. Qualifications for the register.

Where a university in the United Kingdom provides courses of study and examinations leading to a veterinary degree¹ which appear to the Privy Council, after consultation with the Council of the Royal College of Veterinary Surgeons², sufficiently to guarantee that holders of the degree will have acquired the knowledge and skill needed for the efficient practice of veterinary surgery³, the Privy Council may by order (known as a 'recognition order') direct that any person on whom the degree is conferred after attending those courses at that university is entitled to be registered in the register of veterinary surgeons and thereby becomes a member of the college⁴.

On representations by the council of the college that the courses no longer justify the continuance of such an order⁵, the Privy Council may, if it thinks fit, after considering⁶ any objections and observations made by the university concerned, revoke or suspend the order by subsequent order⁷.

On the application of any university in the United Kingdom for which no recognition order is in force the Privy Council, after consultation with the Council of the Royal College of Veterinary Surgeons, may direct the college to hold examinations in veterinary surgery for the students of veterinary surgery attending at that university⁸. Any such student passing the examination is entitled to be registered in the register of veterinary surgeons and on being so registered becomes a member of the Royal College of Veterinary Surgeons⁹.

1 Veterinary Surgeons Act 1966 s 3(1)(a).

2 As to the council see PARA 1149 et seq.

3 Veterinary Surgeons Act 1966 s 3(1)(b). As to the meaning of 'veterinary surgery' see PARA 1126.

4 Veterinary Surgeons Act 1966 s 3(1). See also PARA 1126 note 8. The Privy Council has approved the following degrees at the universities named in the orders cited:

Bachelor of Veterinary Science: Veterinary Surgeons (University Degrees) (Liverpool) Order of Council 1950, SI 1950/1110; Veterinary Surgeons (University Degrees) (Bristol) Order of Council 1950, SI 1950/1301;

Bachelor of Veterinary Medicine and Surgery: Veterinary Surgeons (University Degrees) (Glasgow) Order of Council 1951, SI 1951/571; Veterinary Surgeons (University Degrees) (Edinburgh) Order of Council 1952, SI 1952/1602;

Bachelor of Veterinary Medicine: Veterinary Surgeons (University Degrees) (London) Order of Council 1952, SI 1952/959; Veterinary Surgeons (University Degrees) (Cambridge) Order of Council 1953, SI 1953/404; Veterinary Surgeons (Republic of Ireland University Degrees) (National University) Order of Council 1973, SI 1973/1420 (lapsed) (see PARA 1137);

Bachelor in Veterinary Medicine: Veterinary Surgeons (Republic of Ireland University Degrees) (Dublin) Order of Council 1973, SI 1973/1419 (lapsed) (see PARA 1137).

It should be noted that persons who have been awarded certain Irish qualifications thereby hold a 'recognised European qualification' for the purposes of registration as members of the college: see PARAS 1137, 1139.

5 The Council of the Royal College of Veterinary Surgeons may make such representations if it appears to it, while a recognition order is in force, that the courses of study and degree examinations no longer justify the order: Veterinary Surgeons Act 1966 s 3(2). As to the council's power to supervise courses and examinations see s 5; and PARA 1155. The Privy Council must notify the university in question that such representations have

been made, giving such particulars as may be requisite to enable the university to formulate its observations on or objections to the representations: s 3(3).

6 Such consideration must take place within such time, being not less than two months, after the giving of notice under the Veterinary Surgeons Act 1966 s 3(3) (see note 5), as the Privy Council may determine: s 3(4).

7 Veterinary Surgeons Act 1966 s 3(4). An order suspending a recognition order may be revoked by a subsequent order if it appears to the Privy Council expedient in consequence of representations by the Council of the Royal College of Veterinary Surgeons or the university in question that the recognition order should be revived: s 3(5).

8 Veterinary Surgeons Act 1966 s 4(1). Such a direction ceases to have effect if a recognition order for that university comes into force or is revived, or may be revoked by a subsequent direction of the Privy Council made after consultation with the university and the council of the college: s 4(2).

9 Veterinary Surgeons Act 1966 s 4(1).

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1136 Qualifications for the register

TEXT AND NOTES 3, 8, 9--Veterinary Surgeons Act 1966 s 3(1)(b) amended, s 4(1) substituted: SI 2008/1824.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(3) REGISTRATION AND QUALIFICATIONS/(ii) Qualifications for the Register of Veterinary Surgeons/1137. Holders of Irish veterinary degrees.

1137. Holders of Irish veterinary degrees.

To give effect to any agreement with respect to veterinary surgeons made between Her Majesty's government in the United Kingdom and the government of the Republic of Ireland¹, the Privy Council may, on the recommendation of the Council of the Royal College of Veterinary Surgeons², by order³ direct that the holder of any university veterinary degree of the Republic of Ireland⁴ is entitled, subject to any exception so specified and on compliance with any conditions so specified, to be registered in the register of veterinary surgeons and on being so registered thereby becomes a member of the college⁵.

Persons who are members of the college by virtue of these provisions⁶ are not required to pay a fee in respect of membership in any year⁷.

Persons who hold certain Irish qualifications are entitled to be registered by virtue of such qualifications being recognised European qualifications⁸.

1 See the Agreement with Respect to Veterinary Surgeons (London, 11 April 1988), confirmed and brought into force by the Veterinary Surgeons (Agreement with the Republic of Ireland) Order 1988, SI 1988/784, the Schedule to which contains the text of the agreement. This Order in Council was made under the Veterinary Surgeons Act 1966 s 21(1). As to the contents of such orders see s 21(1)(a)-(d), (2). Such an order may be varied or revoked by a subsequent order under s 21: s 21(3).

2 As to the council see PARA 1149 et seq.

3 As to the making of orders see PARA 1126 note 8.

4 This provision has been applied to the Irish degrees mentioned in PARA 1136 note 4, and in respect of diploma membership of the Royal College of Veterinary Surgeons awarded as a result of an examination following full time study at either of the universities named therein or at the Veterinary College of Ireland: 1988 Agreement art 3(1) (see note 1).

5 Veterinary Surgeons Act 1966 s 21(1)(b)(i). Any order so made may be suspended or revoked: s 21(1)(b)(ii). Registration on this basis is in the general list (see PARA 1133).

6 See note 4.

7 See the 1988 Agreement art 3; and note 1. A fee must be paid, however, if the person wishes to participate in the election of members to the council: see PARA 1149.

8 See the Veterinary Surgeons Act 1966s 5A; and PARA 1139.

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(3) REGISTRATION AND QUALIFICATIONS/(ii) Qualifications for the Register of Veterinary Surgeons/1138. Commonwealth and foreign practitioners.

1138. Commonwealth and foreign practitioners.

A person who shows to the satisfaction of the registrar of the Royal College of Veterinary Surgeons¹ that he is of good character², that he holds a Commonwealth or foreign qualification³ in veterinary surgery⁴ and that he has satisfied the council of the college that he has the requisite knowledge and skill to fit him for practising veterinary surgery in the United Kingdom⁵, is entitled to be registered in the register of veterinary surgeons⁶, and on being so registered he becomes a member of the college⁷. For the purpose of satisfying itself that a person has the requisite knowledge and skill, the council must require that person to sit for examinations⁸ unless the Commonwealth or foreign qualification held by him is of a kind accepted for the time being by the council as constituting, in itself, satisfactory proof that that person possesses the requisite knowledge and skill⁹.

Registration of a person is not permitted under the provisions described above if he relies on a qualification which would entitle him to registration as holding a recognised European qualification¹⁰.

1 As to the registrar see PARA 1153.

2 Veterinary Surgeons Act 1966 s 6(1)(a).

3 As to the meaning of 'Commonwealth qualification' and 'foreign qualification' see PARA 1127 note 2.

4 Veterinary Surgeons Act 1966 s 6(1)(b). As to the meaning of 'veterinary surgery' see PARA 1126. The council may direct that a particular person who has passed the examinations required to obtain such a qualification is to be treated for this purpose as a person holding such a qualification: s 6(5). As to the continued registration of persons registered by virtue of qualifications granted in certain territories whose status has changed see the Bangladesh Act 1973 s 1(3), Schedule para 14; Zimbabwe Act 1979 s 6(1), Sch 2 para 6(b).

5 Veterinary Surgeons Act 1966 s 6(1)(c).

6 As to the register see PARA 1133. Registration on this basis is in the Commonwealth list or the foreign list (see PARA 1133).

7 Veterinary Surgeons Act 1966 s 6(1).

8 Veterinary Surgeons Act 1966 s 6(2). The examinations are held for the purposes of s 6 by or under arrangements made by the college: s 6(2). The council may make regulations as to such examinations: s 6(4); see the Veterinary Surgeons (Examination of Commonwealth and Foreign Candidates) Regulations 2005 (contained in the Veterinary Surgeons (Examination of Commonwealth and Foreign Candidates) Regulations Order of Council 2005, SI 2005/3240), which prescribe the content and standard of the examinations, the conditions for entry and the fees payable. As to the relationship between the regulations and the Veterinary Surgeons Act 1966 s 6(3) (see text and note 9) see *Uruakpa v Royal College of Veterinary Surgeons* [2001] All ER (D) 179 (Oct), EAT (decided with reference to the Veterinary Surgeons (Examination of Commonwealth and Foreign Candidates) Regulations 1967, SI 1967/599 (revoked)).

9 Veterinary Surgeons Act 1966 s 6(3); and see note 8.

10 See the Veterinary Surgeons Act 1966 s 6(6) (substituted by SI 2003/2919). As to the registration of holders of European qualifications see PARA 1139.

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1138 Commonwealth and foreign practitioners

TEXT AND NOTES--Veterinary Surgeons Act 1966 s 6(1A) added, s 6(2) amended: SI 2008/1824.

NOTE 8--SI 2005/3240 amended: SI 2008/2501.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(3) REGISTRATION AND QUALIFICATIONS/(ii) Qualifications for the Register of Veterinary Surgeons/1139. Holders of recognised European qualifications.

1139. Holders of recognised European qualifications.

A person who is a national¹ of a member state² is entitled to be registered in the register of veterinary surgeons³ if he is an eligible European veterinary surgeon and he produces to the registrar⁴ the required additional documentation (if any)⁵, and on being so registered he becomes a member of the Royal College of Veterinary Surgeons⁶.

A national of a member state who is not entitled to be registered in the register as described above may apply to be registered⁷. If such an applicant shows to the satisfaction of the registrar that he has the requisite knowledge and skill to fit him for practising veterinary surgery in the United Kingdom, he is entitled to be registered in the register, and on being so registered becomes a member of the college⁸. In determining such an application, the registrar must take into account (1) any veterinary qualifications, veterinary training and professional experience in veterinary surgery acquired by the applicant, whether in a member state or elsewhere⁹; and (2) any acceptance by a member state other than the United Kingdom, for the purposes of the applicant carrying out veterinary surgery in that member state, of a qualification granted to the applicant in a state which is not a member state¹⁰. However, the registrar must not register an applicant under the provisions described above¹¹ who is subject to a disqualifying decision¹² in a member state in which the applicant is or was established in practice as a veterinary surgeon¹³.

The registrar must give notice to an applicant for registration¹⁴ of whether or not, in the opinion of the registrar, he is entitled to be so registered¹⁵. If the registrar refuses to register the applicant, the notice must include the reasons for his refusal and notice of the applicant's right to appeal¹⁶.

A national of a member state who complies with specified requirements may render veterinary services in the United Kingdom temporarily without being registered¹⁷.

The Council of the college¹⁸ is required to set up a committee of the council to be known as the registration appeals committee¹⁹. A person may appeal to the council if his application for registration²⁰ is refused²¹; such an appeal must be brought within three months of the date on which the applicant receives notice²² or, if the applicant's application is deemed to have been refused²³, the date of the deemed refusal²⁴. Such an appeal must be referred to the registration appeals committee²⁵, which may (a) dismiss the appeal²⁶; (b) allow the appeal and quash the decision appealed against²⁷; (c) substitute for the decision appealed against any other decision which could have been made²⁸; or (d) remit the case to the registrar to dispose of in accordance with the directions of the committee²⁹. The committee must, within 28 days of making a decision, give notice of its decision to the applicant³⁰. A person may appeal to a county court against the decision of the committee within 28 days of the date on which he was notified of that decision³¹. The council may appear as respondent on any such appeal and, for the purpose of enabling directions to be given as to the costs of any such appeal, is deemed to be a party to the appeal whether it appeared at the hearing or not³². On an appeal to county court³³, the court may (i) dismiss the appeal³⁴; (ii) allow the appeal and quash the decision of the committee³⁵; (iii) substitute for the decision appealed against any other decision which could have been made by the committee³⁶; or (iv) remit the case to the committee to dispose of in accordance with the directions of the court³⁷, and may make such order as to costs, as it thinks fit³⁸.

1 'National' in relation to a member state, includes any person who, by virtue of any enforceable Community right, is entitled to be treated, for the purposes of access to the veterinary profession, no less favourably than a

national of such a state, but does not include a person who by virtue of Article 2 of Protocol No 3 (Channel Islands and Isle of Man) to the Treaty of Accession is not to benefit from Community provisions relating to the free movement of persons and services: Veterinary Surgeons Act 1966 s 27(1) (definition substituted by SI 2003/2919).

2 'Member state' means an EEA state or Switzerland: Veterinary Surgeons Act 1966 s 27(1) (definition added by SI 2003/2919; and substituted by SI 2007/1348).

3 As to the register see PARA 1133.

4 As to the registrar see PARA 1153.

5 Veterinary Surgeons Act 1966 s 5A(1) (s 5A added by SI 1980/1951; and substituted by SI 2003/2919; Veterinary Surgeons Act 1966 s 5A(1), (2), (6) subsequently substituted by SI 2007/1348). The Veterinary Surgeons Act 1966 Sch 1A sets out the requirements for eligibility for registration of European veterinary surgeons and the required additional documentation: s 5A(6) (as so added and substituted). Section 5A is subject to the other provisions of the Veterinary Surgeons Act 1966 and any Order in Council under the European Communities Act 1972 s 2(2): Veterinary Surgeons Act 1966 s 5A(7) (added by SI 2007/1348). The following are eligible European veterinary surgeons:

- 6 (1) A person who holds a qualification referred to in the Veterinary Surgeons Act 1966 Sch 1A Table A: Sch 1A para 1(1), Table A (Sch 1A added by SI 1980/1951; and substituted by SI 2007/1348). If the relevant qualification of such a person was granted on or after the date on which the granting state implemented the Recognition Directive, and in respect of training commenced on or after that date, no additional documentation is required to be produced to the registrar under the Veterinary Surgeons Act 1966 s 5A(1)(b): Sch 1A para 1(2) (as so added and substituted). If the relevant qualification of such a person was granted before the date on which the granting state implemented the Recognition Directive, or on or after that date but in respect of training commenced before that date, the required additional documentation is either (a) a certificate from the competent authority of the granting state which states that the relevant qualification meets the requirements of the Training Directive; or (b) a certificate from the competent authority of any member state which states that the person has effectively and lawfully practised veterinary surgery for at least three consecutive years during the five years preceding the date of the certificate: Sch 1A para 1(3), (4) (as so added and substituted).
- 7 (2) A person who holds a qualification of a kind referred to in Sch 1A Table 2: Sch 1A para 2(1) (as so added and substituted). In relation to such a person, the required additional documentation is the documentation referred to in Table B column 3 of opposite the entry in column 2 for the relevant qualification: Sch 1A para 2(2) (as so added and substituted). This head does not apply to a person who is an eligible European veterinary surgeon under head (1): Sch 1A para 2(3) (as so added and substituted).
- 8 (3) A person who holds a qualification in veterinary surgery granted in a member state, other than a qualification in either Table A or Table B: Sch 1A para 3(1) (as so added and substituted). If the relevant qualification of such a person was granted on or after the date on which the granting state implemented the Training Directive and in respect of training commenced on or after that date, the required additional documentation is a certificate from the competent authority of the granting state which states that the relevant qualification meets the requirements of the Training Directive and is treated by the granting State as equivalent to a qualification of a kind referred to in Sch 1A Table A: Sch 1A para 3(2) (as so added and substituted). If the relevant qualification of such a person was granted before the date on which the granting State implemented the Training Directive or on or after that date but in respect of training commenced before that date, the required additional documentation is a certificate from the competent authority of any member state which states that the person has effectively and lawfully practised veterinary surgery for at least three consecutive years during the five years preceding the date of the certificate: Sch 1A para 3(3) (as so added and substituted).

'Recognition Directive' means EEC Council Directive 78/1026 (OJ L362, 23.12.1978, p 1) concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in veterinary medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services; and 'Training Directive' means EEC Council Directive 78/1027 (OJ L362, 23.12.1978, p 7) concerning the co-ordination of provisions in respect of the activities of veterinary surgeons: Veterinary Surgeons Act 1966 Sch 1A para 5 (as so added and substituted). For the purposes of Sch 1A a member state is to be regarded as having implemented the Recognition Directive or the Training Directive on the date notified to the Commission as the date on which it did so: Veterinary Surgeons Act 1966 Sch 1A para 4 (as so added and substituted).

'Relevant qualification' means the qualification by virtue of which a person is an eligible European veterinary surgeon; and 'granting state' means the member state in which a relevant qualification was granted: Veterinary Surgeons Act 1966 Sch 1A para 5 (as so added and substituted).

6 Veterinary Surgeons Act 1966 s 5A(2) (as added and substituted: see note 5). As to the college see PARA 1147 et seq.

7 Veterinary Surgeons Act 1966 s 5B(1) (ss 5B-5D added by SI 2003/3913).

8 Veterinary Surgeons Act 1966 s 5B(2) (as added: see note 7).

9 Veterinary Surgeons Act 1966 s 5B(3)(a) (as added: see note 7).

10 Veterinary Surgeons Act 1966 s 5B(3)(b) (as added: see note 7).

11 Ie under the Veterinary Surgeons Act 1966 s 5A or 5B: Veterinary Surgeons' Qualifications (European Recognition) Order 2003, SI 2003/2919, arts 3, 4.

12 A disqualifying decision is a decision in respect of a person made by the competent authority of a state or the body responsible in that state for the registration or recognition of veterinary surgeons which (1) is expressed to be made on the grounds that the person has committed a criminal offence or has misconducted himself in a professional respect; and (2) results in the person no longer being registered or otherwise officially recognised as a veterinary surgeon, or being prohibited from practising as a veterinary surgeon there: Veterinary Surgeons' Qualifications (European Recognition) Order 2003, SI 2003/2919, art 5.

13 Veterinary Surgeons' Qualifications (European Recognition) Order 2003, SI 2003/2919, arts 3, 4. As to the procedure where a person registered under the Veterinary Surgeons Act 1966 s 5A or 5B was or is subject to a disqualifying decision, see the Veterinary Surgeons' Qualifications (European Recognition) Order 2003, SI 2003/2919, arts 6-9.

14 Ie an applicant for registration under Veterinary Surgeons Act 1966 s 5A: s 5A(3) (as added and substituted: see note 5). Section 5A(3)-(5) also applies to s 5B: s 5B(4) (as added: see note 7).

15 Veterinary Surgeons Act 1966 s 5A(3) (as added and substituted: see note 5). The registrar must give such notice within three months of (1) the date on which the registrar received his application; or (2) if for the purpose of determining the application the registrar reasonably required the applicant to produce further documents or particulars, the date on which the registrar received them: s 5A(3) (as so added and substituted). If the registrar fails to give such notice to the applicant within the three-month period, the registrar is deemed to have refused to register him on the last day of that period: s 5A(5) (as so added and substituted).

16 Veterinary Surgeons Act 1966 s 5A(4) (as added and substituted: see note 5). As to the right of appeal, see text and notes 20-38.

17 See the Veterinary Surgeons' Qualifications (European Recognition) Order 2003, SI 2003/2919, art 10. As to disciplinary provisions affecting practitioners who render veterinary services while visiting the United Kingdom temporarily see art 11.

18 As to the council see PARA 1149 et seq.

19 Veterinary Surgeons Act 1966 s 5D(1) (s 5D as added: see note 7). The registration appeals committee is to be charged with considering and determining appeals under s 5C(1) (see text and note 21): s 5D(1) (as so added). The committee consists of five members of the council, not more than three of whom may be members of the college: s 5D(2) (as so added). The quorum for a meeting of the committee is three, not more than two of whom are members of the college: s 5D(3) (as so added). The council must make rules relating to the appointment of members of the committee, the constitution of that committee and the procedure to be followed in relation to appeals to that committee, including provision as to any rules of evidence to be observed in such appeals: s 5D(4) (as so added). As to such rules see the Veterinary Surgeons (Registration Appeals) Rules Order of Council 2004, SI 2004/2143 (in force on 1 January 2005).

20 Ie his application under the Veterinary Surgeons Act 1966 s 5A or 5B.

21 Veterinary Surgeons Act 1966 s 5C(1) (as added: see note 7).

22 Veterinary Surgeons Act 1966 s 5C(2)(a) (as added: see note 7). The notice referred to is a notice given under s 5A(3) (see text and notes 14-15).

23 As to deemed refusal see note 15.

24 Veterinary Surgeons Act 1966 s 5C(2)(b) (as added: see note 7).

25 As to the registration appeals committee see text and notes 18-19.

- 26 Veterinary Surgeons Act 1966 s 5C(3)(a) (as added: see note 7).
- 27 Veterinary Surgeons Act 1966 s 5C(3)(b) (as added: see note 7).
- 28 Veterinary Surgeons Act 1966 s 5C(3)(c) (as added: see note 7).
- 29 Veterinary Surgeons Act 1966 s 5C(3)(d) (as added: see note 7).
- 30 Veterinary Surgeons Act 1966 s 5C(4) (as added: see note 7). A notice under s 5C(4) must (1) give reasons for the decision of the committee; and (2) refer to the applicant's right to appeal to a county court against the decision of the committee: s 5C(5), (7) (as so added).
- 31 Veterinary Surgeons Act 1966 s 5C(6), (7) (as added: see note 7).
- 32 Veterinary Surgeons Act 1966 s 5C(8) (as added: see note 7).
- 33 Is an appeal under the Veterinary Surgeons Act 1966 s 5C.
- 34 Veterinary Surgeons Act 1966 s 5C(9)(a) (as added: see note 7).
- 35 Veterinary Surgeons Act 1966 s 5C(9)(b) (as added: see note 7).
- 36 Veterinary Surgeons Act 1966 s 5C(9)(c) (as added: see note 7).
- 37 Veterinary Surgeons Act 1966 s 5C(9)(d) (as added: see note 7).
- 38 Veterinary Surgeons Act 1966 s 5C(9) (as added: see note 7).

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1139 Holders of recognised European qualifications

TEXT AND NOTES--Veterinary Surgeons Act 1966 ss 5A-5C, Sch 1A substituted by ss 5A, 5B, 5BA, 5C, 5CA-5CE, Sch 1A; ss 5D(1), 27(1) amended; s 7A, Sch 1B (visiting European veterinary surgeons) added; SI 2003/2919 arts 3-11 revoked: SI 2008/1824.

NOTE 19--SI 2004/2143 replaced: Veterinary Surgeons (Registration Appeals) Rules Order of Council 2009, SI 2009/2474.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(3) REGISTRATION AND QUALIFICATIONS/(ii) Qualifications for the Register of Veterinary Surgeons/1140. Temporary registration.

1140. Temporary registration.

The Council of the Royal College of Veterinary Surgeons, with a view to permitting a person who satisfies it that he has attended a course of study, and has passed the examinations, leading to a degree to which a recognition order¹ relates², and a person holding a Commonwealth or foreign qualification³ in veterinary surgery⁴, to practise veterinary surgery temporarily or otherwise subject to restrictions, may direct that he be registered subject to such restrictions as the council may specify with respect to the period for which, the place or places at which and the circumstances in which he may practise⁵. Any person with respect to whom such a direction is given is entitled to be registered subject to the entry against his name of the restrictions so specified⁶.

1 As to recognition orders see PARA 1136.

2 Veterinary Surgeons Act 1966 s 7(1)(a).

3 As to the meaning of 'Commonwealth qualification' and 'foreign qualification' see PARA 1127 note 2; and as to such qualifications see PARA 1138.

4 Veterinary Surgeons Act 1966 s 7(1)(b). As to the meaning of 'veterinary surgery' see PARA 1126. The council may direct that a particular person who has passed the examinations required to obtain such a qualification is to be treated for this purpose as a person holding such a qualification: s 7(4).

5 Veterinary Surgeons Act 1966 s 7(1).

6 Veterinary Surgeons Act 1966 s 7(1). Registration under s 7 does not make it lawful for a person to practise veterinary surgery otherwise than subject to the restrictions: s 7(2). If a person so registered fails to comply with any restriction the council may cause his name to be removed from the register: s 7(3).

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(3) REGISTRATION AND QUALIFICATIONS/(iii) Entry of Names and Qualifications/1141. Procedure for registration.

(iii) Entry of Names and Qualifications

1141. Procedure for registration.

Any right to registration¹ in the register of the Royal College of Veterinary Surgeons or the supplementary register is conditional on the making of an application supported by the requisite evidence². A person applying to be registered must produce or send to the registrar³ the document conferring or evidencing his qualification for registration, together with a statement of his name and address and the other particulars, if any, required for registration⁴.

1 See PARAS 1133-1134.

2 Veterinary Surgeons Act 1966 s 10(1).

3 As to the registrar see PARA 1153.

4 Veterinary Surgeons Act 1966 s 10(2). As to the regulations for registration see the Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005 (scheduled to the Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations Order of Council 2005, SI 2005/3517); and PARA 1142 note 1. As to offences in respect of procuring or attempting to procure registration by making or producing false declarations, certificates or representations see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 718.

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1141 Procedure for registration

TEXT AND NOTES--Veterinary Surgeons Act 1966 s 10(3) added: SI 2008/1824.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(3) REGISTRATION AND QUALIFICATIONS/(iii) Entry of Names and Qualifications/1142. Regulations with respect to the register.

1142. Regulations with respect to the register.

The Council of the Royal College of Veterinary Surgeons may make regulations¹ with respect to the form and keeping of the registers², the making of entries in them, and the removal of entries from them³, including, in particular, regulations (1) prescribing a fee to be charged on the entry of a name in either register or on the restoration of any entry to either register⁴, or in respect of the retention of the name of a person in any year subsequent to the year in which he was first registered⁵; and (2) authorising the registrar, notwithstanding anything in the Veterinary Surgeons Act 1966, to refuse to make in, or restore to, either register any entry until a prescribed fee has been paid⁶, and authorising him to remove the name of any person from either register if after prescribed notices and warnings he fails to pay the fee prescribed for the retention of his name in that register⁷. The council may give directions authorising any additional qualifications⁸ specified in the directions to be entered in either register on the application of registered veterinary surgeons who hold them⁹.

1 The current regulations are the Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005, approved by the Privy Council and brought into force by, and scheduled to, the Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations Order of Council 2005, SI 2005/3517 (amended by SI 2006/3255; and SI 2007/3439).

2 As to the registers see PARAS 1133-1134. Although the provisions of the Veterinary Surgeons Act 1966 s 11(1)-(5) apply to both the veterinary surgeons register and the supplementary veterinary register, regulations may make different provision in relation to them: s 11(6).

3 Veterinary Surgeons Act 1966 s 11(1), (6).

4 Veterinary Surgeons Act 1966 s 11(1)(a), (6). Different fees may be chargeable in different cases, and fees may be excused in prescribed cases: s 11(4).

5 Veterinary Surgeons Act 1966 s 11(1)(b), (6). See also note 4.

6 Veterinary Surgeons Act 1966 s 11(1)(c), (6).

7 Veterinary Surgeons Act 1966 s 11(2), (6). If within a prescribed period a person whose name has been removed pays the due fee and any additional prescribed sum, his name is to be restored: s 11(3).

8 As to the meaning of 'qualification' see PARA 1127 note 2.

9 Veterinary Surgeons Act 1966 s 11(5).

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1142 Regulations with respect to the register

TEXT AND NOTES--Veterinary Surgeons Act 1966 s 11(7) added: SI 2008/1824.

NOTE 1--SI 2005/3517 further amended: SI 2008/2933.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(3) REGISTRATION AND QUALIFICATIONS/(iii) Entry of Names and Qualifications/1143. Abbreviations of qualifications granted abroad.

1143. Abbreviations of qualifications granted abroad.

Where a person's name is entered in the Commonwealth list or the foreign list¹, or an additional qualification² granted in a place outside the United Kingdom is entered against a person's name in any part of the register of veterinary surgeons, the registrar must enter the qualification by virtue of which that person is registered or the additional qualification, in such abbreviated form as the registrar, after consultation with the Council of the Royal College of Veterinary Surgeons, may select as being convenient³.

1 As to these lists see PARA 1133.

2 As to the meaning of 'qualification' see PARA 1127 note 2.

3 Veterinary Surgeons Act 1966 s 12. As to the registrar see PARA 1153.

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(3) REGISTRATION AND QUALIFICATIONS/(iii) Entry of Names and Qualifications/1144. Removal of name on death or ceasing to practise.

1144. Removal of name on death or ceasing to practise.

The registrar of the Royal College of Veterinary Surgeons must remove from the registers¹ the name of every deceased person; and a registrar of births and deaths², on registering the death of a registered veterinary surgeon, must, without charge, send forthwith by post to the registrar of the college a copy certified under his hand of the entry in the register of deaths relating to the death³.

If a registered veterinary surgeon has ceased to practise, the registrar of the college may at his request or with his consent remove his name from the register⁴. The registrar may send by post to a registered veterinary surgeon a notice inquiring whether he has ceased to practise or has changed his residence and, if no answer is received to the inquiry within six months from the posting of the notice, he may remove the veterinary surgeon's name from the register⁵. In such a case, or where the person's name was removed at his request or with his consent on his ceasing to practise, the person's name may be restored to the register on his application unless the original entry was incorrectly or fraudulently made⁶.

1 The provisions described in this paragraph apply to both the veterinary surgeons register and the supplementary veterinary register: see the Veterinary Surgeons Act 1966 s 13(5). As to the registers see PARAS 1133-1134. As to the registrar see PARA 1153.

2 As to such registrars see **REGISTRATION CONCERNING THE INDIVIDUAL**.

3 Veterinary Surgeons Act 1966 s 13(1).

4 Veterinary Surgeons Act 1966 s 13(2).

5 Veterinary Surgeons Act 1966 s 13(3).

6 Veterinary Surgeons Act 1966 s 13(4). The Council of the Royal College of Veterinary Surgeons may restore the name on receipt of an application form, a restoration fee and a retention fee for the fee year in which the application is made: Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005 reg 13(2) (amended by SI 2007/3439) (those regulations scheduled to the Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations Order of Council 2005, SI 2005/3517: see PARA 1142 note 1); the fees are prescribed by the Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005 reg 23A, Schedule (reg 23A added, and Schedule substituted, by SI 2007/3439). In the case of an applicant who has not been included in either register during one year immediately preceding the date of application, evidence establishing to the registrar's satisfaction the applicant's identity and good character is required: Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005 reg 13(2)(c).

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1144 Removal of name on death or ceasing to practise

NOTE 6--SI 2005/3517 Schedule substituted: SI 2008/2933.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(3) REGISTRATION AND QUALIFICATIONS/(iii) Entry of Names and Qualifications/1145. Incorrect and fraudulent entries.

1145. Incorrect and fraudulent entries.

It is the duty of the Council of the Royal College of Veterinary Surgeons to refer to the disciplinary committee¹ any case in which it appears to it that an entry in the register of veterinary surgeons or the supplementary veterinary register² has been fraudulently made³. It is also its duty to remove from the registers any other entry which has been incorrectly made⁴.

1 As to the disciplinary committee see PARA 1159.

2 As to these registers see PARAS 1133-1134.

3 See further PARA 1172.

4 Veterinary Surgeons Act 1966 s 14.

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(3) REGISTRATION AND QUALIFICATIONS/(iii) Entry of Names and Qualifications/1146. Fees.

1146. Fees.

A person must at the time of application for registration pay a registration fee for the entry of his name in the general list, the Commonwealth list or the foreign list¹. A retention fee is payable in the year of registration (in addition to the registration fee), calculated by reference to the number of full quarters remaining of the fee year² in which registration takes place³. These fees cover the insertion in the list of the appropriate particulars⁴ and entitle the veterinary surgeon⁵ to the retention of his name in the list until the end of the fee year in which the entry was made⁶. He must then pay a retention fee for the retention of his name in the list for each further fee year⁷.

A veterinary practitioner⁸ must pay a retention fee for the retention of his name in the supplementary veterinary register for each fee year following that in which his name is first entered in it⁹.

Where the registrar of the Royal College of Veterinary Surgeons has not received by 30 April of any year from a veterinary surgeon or veterinary practitioner a retention fee due on the preceding 31 March he must send a warning that failure to pay the fee by 29 May will result in the removal from the appropriate register of the name in relation to which the fee is due, and if the fee is not received, he must remove the name from the register¹⁰. Where a name has been removed from the register, the registrar must restore the name to the relevant register on receipt of an application on the appropriate form if the veterinary surgeon or veterinary practitioner pays the retention fee due plus a restoration fee¹¹. Restoration takes effect on the date of receipt of the appropriate form and fee¹². Where the name of the applicant for restoration has not been included in the register or the supplementary veterinary register during one year immediately preceding the date of application, evidence establishing to the satisfaction of the registrar the applicant's identity and good character is required¹³.

1 See the Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005, regs 14, 23A, Schedule para 1 (those regulations scheduled to the Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations Order of Council 2005, SI 2005/3517: see PARA 1142 note 1) (reg 14 amended, reg 23A added and Schedule substituted by SI 2007/3439). As to the lists see PARA 1133.

2 'Fee year' means the period running from 1 April to 31 March: Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005 reg 2(1).

3 See the Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005 regs 15, 17, Schedule para 2 (regs 15, 17 amended and Schedule substituted by SI 2007/3439).

4 For the particulars see the Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005 reg 3(1).

5 'Veterinary surgeon' means a person registered in the register: Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005 reg 2(1).

6 See the Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005 reg 15 (as amended: see note 2).

7 See the Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005 reg 16(a). An application form for retention, a notice of fees payable and a warning that failure to pay fees entails removal from the register is sent out not later than 14 March each year: see reg 7.

8 'Veterinary practitioner' means a person registered in the supplementary veterinary register: Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005 reg 2(1).

9 Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005 regs 16(b), 17, Schedule para 2. See also reg 7; and note 7.

10 Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005 reg 8.

11 Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005 reg 13(1)(a), Schedule paras 2, 3 (reg 13 amended and Schedule substituted by SI 2007/3439). In cases of repeated removal under the provisions of the Veterinary Surgeons Act 1966 s 11(2) the restoration fee is increased by 100% for each time the applicant has been so removed: Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005 reg 13(1)(c) (as so amended).

12 Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005 reg 13(1)(b) (as amended: see note 11).

13 Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005 reg 13(1)(d) (as amended: see note 11).

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1146 Fees

NOTES 1, 3, 11--SI 2005/3517 Schedule substituted: SI 2008/2933.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(4) THE ROYAL COLLEGE OF VETERINARY SURGEONS/(i) The College/1147. Incorporation.

(4) THE ROYAL COLLEGE OF VETERINARY SURGEONS

(i) The College

1147. Incorporation.

The Royal College of Veterinary Surgeons was incorporated in 1844 by royal charter, and this charter, and two supplemental charters granted in 1876 and 1879, were confirmed by statute¹. Further charters have been granted to the college from time to time², the most recent one being in 1967, which revoked all previous supplemental charters together with a substantial portion of the charter of 1844. It restates and consolidates provisions of the previous charters relating to the administration of the college which are not covered by the Veterinary Surgeons Act 1966. The college has perpetual succession and a common seal³.

¹ Veterinary Surgeons Act 1881 ss 2, 14 (repealed). The original charter recites that the veterinary art was not recognised as a profession (see also *Sewell v Corp* (1824) 1 C & P 392), declared that it should be so recognised, and provided that members of the college should be known and distinguished by the name or title of 'veterinary surgeons'. As to incorporation by charter generally see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1128 et seq.

² ie in 1883, 1892, 1914, 1923, 1932, 1961, 1963, 1965 and 1967.

³ As to the corporate seal see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1263 et seq.

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(4) THE ROYAL COLLEGE OF VETERINARY SURGEONS/(i) The College/1148. Constitution.

1148. Constitution.

The Royal College of Veterinary Surgeons consists of fellows, members and honorary fellows and associates.

A fellow of the college is a member who has presented a thesis, or made a meritorious contribution to learning¹.

Persons holding veterinary degrees of universities to which recognition orders relate², students of other universities in the United Kingdom who have passed examinations held by the college³, Commonwealth or foreign practitioners⁴, and holders of recognised European qualifications in veterinary surgery⁵, on being registered in the register of veterinary surgeons, become members of the college⁶.

Honorary fellows and associates are persons elected to this position by the council of the college⁷.

1 Byelaws of the college prescribe conditions for the diploma of fellowship and relating to the award of the diploma of veterinary anaesthesia and veterinary radiology.

2 As to recognition orders see PARA 1136.

3 As to college examinations see PARA 1136.

4 As to Commonwealth and foreign practitioners see PARA 1138.

5 See PARA 1139.

6 See PARAS 1136, 1138-1139.

7 Honorary fellows and associates are persons of special eminence or who have rendered special services to veterinary science or the veterinary profession.

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(4) THE ROYAL COLLEGE OF VETERINARY SURGEONS/(ii) The Council of the College/A. CONSTITUTION, MEMBERS AND OFFICERS/1149. Constitution of the council.

(ii) The Council of the College

A. CONSTITUTION, MEMBERS AND OFFICERS

1149. Constitution of the council.

The government of the Royal College of Veterinary Surgeons is vested in a council, consisting of: 24 members of the college elected from among themselves¹ by members of the college²; four persons appointed by the Privy Council³; two persons, at least one of whom must be a member of the college, appointed by each university in the United Kingdom for which a recognition order is in force⁴; and such additional persons as are elected or appointed in accordance with the terms of any agreement between Her Majesty's government in the United Kingdom and the government of the Republic of Ireland⁵. Where the Privy Council makes an order⁶ relating to the recognition of a university which results in a change in the number of members appointed by universities, it may after consultation with the council by order make such alteration in the number of elected members as may secure that there is a majority of elected members over all other members of the council⁷, and make such consequential provision as to the term of office of the elected members as appears necessary or expedient in consequence of the change in the total number of elected members⁸.

The powers of the council and of its committees may be exercised notwithstanding any vacancy, and no proceedings of the council or of its committees are invalidated by any defect in the election or appointment of a member⁹.

1 Elections of elected members must be conducted in accordance with a scheme made by the council of the college and approved by the Privy Council (Veterinary Surgeons Act 1966 s 1(3), Sch 1 para 9), and must be held before the annual general meeting of the college at which the relevant vacancy occurs (Sch 1 para 6(1)). Such a scheme may be amended by the council but no amendment has effect unless approved by the Privy Council: Sch 1 para 10. Members of the college who are not required to pay a fee for membership by reason of an agreement between the governments of the United Kingdom and Ireland (see PARA 1137) may nonetheless not participate in elections, whether proposing, standing or voting, unless they have paid a prescribed fee: Veterinary Surgeons Act 1966 s 1(1A) (added by SI 1988/784). See also the 1988 Agreement (see PARA 1137 note 1) art 3(3).

2 Veterinary Surgeons Act 1966 s 1(1)(a).

3 Veterinary Surgeons Act 1966 s 1(1)(b).

4 Veterinary Surgeons Act 1966 s 1(1)(c). As to recognition orders see PARA 1136.

5 See the Veterinary Surgeons Act 1966 s 21(1)(a); and PARA 1137. The 1988 Agreement provided that the representative appointed by the Irish Minister of Agriculture, Fisheries and Food and two Irish elected members should cease to hold office on 31 May 1988: art 2. The previous Agreement (1972 Agreement art 2(2)(b), (3)(a)) provided for the two Irish universities each to appoint one representative, whose term of office would be four years, and who would then be eligible for re-appointment. Although the 1988 Agreement did not expressly terminate the tenure of these office holders, it did revoke the 1972 Agreement and did not make new provisions as to such representatives. It should be noted that veterinary surgeons or practitioners with recognised European qualifications (which would include those awarded by Irish universities) are eligible for membership of the college, and therefore for membership of the council: see PARA 1139.

6 Ie under the Veterinary Surgeons Act 1966 s 3: see PARA 1136.

7 Veterinary Surgeons Act 1966 s 1(4)(a). See also PARA 1126 note 8.

8 Veterinary Surgeons Act 1966 s 1(4)(b). Such an order may include provision modifying Sch 1: s 1(4)(b). See also PARA 1126 note 8.

9 Veterinary Surgeons Act 1966 Sch 1 para 11.

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(4) THE ROYAL COLLEGE OF VETERINARY SURGEONS/(ii) The Council of the College/A. CONSTITUTION, MEMBERS AND OFFICERS/1150. Terms of office and vacancies for membership of the council.

1150. Terms of office and vacancies for membership of the council.

The term of office of any member of the Council of the Royal College of Veterinary Surgeons is, as near as may be, four years, and the day on which he ordinarily retires is the day of the annual general meeting of the college in the year in which he retires¹. Each year the six elected members of the council who have been such members for the longest time without re-election must retire². A person ceasing to be a member of the council is eligible to be re-elected³. A member of the council may at any time resign his office as member by notice in writing addressed to the registrar⁴. An elected member of the council, or a member of the council appointed by a university as being a member of the college, ceases to hold office if he ceases to be a member of the college⁵.

1 Veterinary Surgeons Act 1966 s 1(3), Sch 1 para 1(1). If on the coming into force of a recognition order for any university a member of the council is appointed by that university between two annual general meetings of the college, then his term of office does not expire until the fourth annual general meeting after it began: Sch 1 para 1(3). If a recognition order ceases to be in force for any university, any member appointed to the council by that university thereupon ceases to hold office: Sch 1 para 5. As to recognition orders see PARA 1136.

2 Veterinary Surgeons Act 1966 Sch 1 para 1(2).

3 Veterinary Surgeons Act 1966 Sch 1 para 8.

4 Veterinary Surgeons Act 1966 Sch 1 para 3. As to the registrar see PARA 1153.

5 Veterinary Surgeons Act 1966 Sch 1 para 4.

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(4) THE ROYAL COLLEGE OF VETERINARY SURGEONS/(ii) The Council of the College/A. CONSTITUTION, MEMBERS AND OFFICERS/1151. Filling casual vacancies.

1151. Filling casual vacancies.

Where a casual vacancy occurs among the elected members of the Council of the Royal College of Veterinary Surgeons, the vacancy is filled by the unsuccessful candidate who at the last previous ordinary election received most votes and has not since become a member¹, or, if two or more such candidates received equal votes, by the candidate registered longest on the register², or, if there were no unsuccessful candidates at that election, by a person appointed by the council³. A person filling a casual vacancy among elected members holds office until the date on which the person whose vacancy he fills would have regularly retired⁴.

Where a casual vacancy occurs among members of the council appointed by the Privy Council or a university, the appointing body fills the vacancy⁵.

1 Veterinary Surgeons Act 1966 s 1(3), Sch 1 para 7(1)(a).

2 Veterinary Surgeons Act 1966 Sch 1 para 7(1)(b). If two or more such candidates have been registered longer than any other but for the same period as each other, the vacancy is filled by one of them chosen by lot: Sch 1 para 7(1)(b).

3 Veterinary Surgeons Act 1966 Sch 1 para 7(1)(c).

4 Veterinary Surgeons Act 1966 Sch 1 para 7(4).

5 Veterinary Surgeons Act 1966 Sch 1 para 7(2).

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(4) THE ROYAL COLLEGE OF VETERINARY SURGEONS/(ii) The Council of the College/A. CONSTITUTION, MEMBERS AND OFFICERS/1152. President and vice-presidents.

1152. President and vice-presidents.

The Royal College of Veterinary Surgeons has a president and two vice-presidents who must be elected from among themselves by members of the council of the college¹. The term of office of the president or a vice-president is, as near as may be, one year, and he must retire at the next meeting of the council after the annual general meeting². He may at any time by notice in writing addressed to the registrar resign his office³.

Elections to fill an ordinary vacancy in the office of president or vice-president are held at the meeting of the council at which the vacancy occurs⁴. Where a casual vacancy occurs in such an office, the vacancy is filled by an election held at the first meeting of the council after the vacancy occurs⁵, and the person filling the casual vacancy holds office until the date on which the person whose vacancy he fills would have regularly retired⁶.

1 Veterinary Surgeons Act 1966 s 1(2).

2 Veterinary Surgeons Act 1966 s 1(3), Sch 1 para 2. He holds office until that next meeting notwithstanding that he has ceased to be a member of the council, unless he resigns his office or ceases to be a member of the council by resignation or because he ceases to be a member of the college, or a recognition order for a university by which he has been appointed ceases to be in force: Sch 1 para 2. A person ceasing to be president or vice-president is eligible to be re-elected: Sch 1 para 8.

3 Veterinary Surgeons Act 1966 Sch 1 para 3. As to the registrar see PARA 1153.

4 Veterinary Surgeons Act 1966 Sch 1 para 6(2).

5 Veterinary Surgeons Act 1966 Sch 1 para 7(3).

6 Veterinary Surgeons Act 1966 Sch 1 para 7(4).

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(4) THE ROYAL COLLEGE OF VETERINARY SURGEONS/(ii) The Council of the College/A. CONSTITUTION, MEMBERS AND OFFICERS/1153. Registrar and assistant registrar.

1153. Registrar and assistant registrar.

The registrar of the Royal College of Veterinary Surgeons is appointed by the council of the college¹. He must keep the registers² and perform such other duties in connection with them as the council directs; and in the execution of his duties he must act on such evidence as in each case appears sufficient³. The council may appoint an assistant registrar who is entitled to perform all the functions of the registrar⁴.

1 Veterinary Surgeons Act 1966 s 9(1).

2 Veterinary Surgeons Act 1966 s 9(1), (8). These are the register of veterinary surgeons and the supplementary veterinary register: see PARAS 1133-1134.

3 Veterinary Surgeons Act 1966 s 9(2), (8).

4 Veterinary Surgeons Act 1966 s 27(2).

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(4) THE ROYAL COLLEGE OF VETERINARY SURGEONS/(ii) The Council of the College/B. FUNCTIONS/1154. Management of the college.

B. FUNCTIONS

1154. Management of the college.

The Council of the Royal College of Veterinary Surgeons has entire management of the college and exercises the various powers and duties of the college relating to the examination and registration of veterinary surgeons. It has certain powers to make rules and regulations¹ which do not take effect unless approved by order of the Privy Council².

¹ See the Veterinary Surgeons Act 1966 s 6(4) (see PARA 1138 note 8), s 11(1) (see PARA 1142), s 19(3) (see PARA 1129 text and note 26), and Sch 2 Pt II para 5 (see PARA 1160).

² Veterinary Surgeons Act 1966 s 25(1). Such an order, which must be made by statutory instrument (s 25(3)), may be revoked by a subsequent order of the Privy Council (s 25(2)).

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(4) THE ROYAL COLLEGE OF VETERINARY SURGEONS/(ii) The Council of the College/B. FUNCTIONS/1155. Supervision of courses of study and examinations.

1155. Supervision of courses of study and examinations.

The Council of the Royal College of Veterinary Surgeons has powers to secure that courses of study followed by students training to be veterinary surgeons, and the standard of proficiency required for registration in the register of veterinary surgeons¹, are such as sufficiently to guarantee that persons registered in the register will have acquired the knowledge and skill needed for the efficient practice of veterinary surgery²; and the council has a duty to exercise the following powers for this purpose³.

It may appoint persons to visit the universities for which recognition orders⁴ are in force or are proposed to be made, and any other universities which for the time being provide or propose to provide courses leading to examination by the college, and to report on the courses of study, staffing, accommodation and equipment available for training, and the other arrangements and facilities for such training⁵. It may appoint persons to attend at examinations in any aspect of veterinary surgery at universities for which recognition orders are in force or are proposed to be made, and to report to it as to the sufficiency of the examinations and such other matters relating to them as it may require⁶. A copy of any report must be sent by the council to the university concerned⁷, which may within two months of receiving it make to the council observations on the report or objections to it⁸. As soon as practicable after the period has expired a copy of the report and any observations and objections which have been made, together with the council's comments, must be sent to the Privy Council⁹.

Every university for which a recognition order is in force must, on written request, furnish the council with any information specified in the request as to the courses of study and examinations leading to the degree to which the recognition order relates, and a university for whose students of veterinary surgery examinations are held by the college¹⁰ must, on being so requested, furnish the council with any information specified in the request as to the courses of study preparing students for those examinations¹¹.

1 As to the register see PARA 1133.

2 As to the meaning of 'veterinary surgery' see PARA 1126.

3 Veterinary Surgeons Act 1966 s 5(1).

4 As to recognition orders see PARA 1136.

5 Veterinary Surgeons Act 1966 s 5(2).

6 Veterinary Surgeons Act 1966 s 5(3). This provision does not, however, authorise a person so appointed to interfere with the conduct of any examination: s 5(3) proviso.

7 Veterinary Surgeons Act 1966 s 5(4)(a).

8 Veterinary Surgeons Act 1966 s 5(4)(b).

9 Veterinary Surgeons Act 1966 s 5(4)(c).

10 Ie under the Veterinary Surgeons Act 1966 s 4: see PARA 1136.

11 Veterinary Surgeons Act 1966 s 5(5).

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1155 Supervision of courses of study and examinations

TEXT AND NOTES--For the purposes of European Parliament and EC Council Directive 2005/36 the College of the Royal College of Veterinary Surgeons is the competent authority in the United Kingdom as concerns veterinary surgeons: see Veterinary Surgeons Act 1966 s 1A (added by SI 2008/1824).

TEXT AND NOTES 1-3--Veterinary Surgeons Act 1966 s 5(1) amended: SI 2008/1824.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(4) THE ROYAL COLLEGE OF VETERINARY SURGEONS/(ii) The Council of the College/B. FUNCTIONS/1156. Control by the Privy Council.

1156. Control by the Privy Council.

If it appears to the Privy Council that the Council of the Royal College of Veterinary Surgeons has failed, but ought, to discharge any of its functions under the Veterinary Surgeons Act 1966, the Privy Council may notify its opinion to the council and may direct it to discharge that function in such a manner and within such a period as may be specified in the direction¹. If the council fails to comply with such a direction, the Privy Council may itself discharge the function in question².

¹ Veterinary Surgeons Act 1966 s 22(1).

² Veterinary Surgeons Act 1966 s 22(2). As to the performance of the functions of the Privy Council see PARA 1126.

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1157. Grounds for removal from the registers or suspension.

(5) DISCIPLINE

1157. Grounds for removal from the registers or suspension.

The disciplinary committee¹ of the Council of the Royal College of Veterinary Surgeons may exercise its disciplinary powers if (1) a registered veterinary surgeon or a registered veterinary practitioner is convicted in the United Kingdom or elsewhere of a criminal offence which, in the committee's opinion, renders him unfit to practise veterinary surgery²; or (2) any such person is judged by the committee to have been guilty of disgraceful conduct in any professional respect³; or (3) the committee is satisfied that the name of any such person has been fraudulently entered in the register of veterinary surgeons or the supplementary veterinary register⁴. In these circumstances the committee may, if it thinks fit, direct that the person's name be removed from the appropriate register or, except in the case of fraudulent entry, that his registration be suspended⁵. Where any such direction is made, the registrar of the council must serve notice of the direction on the person concerned⁶.

1 As to the disciplinary committee see PARA 1159.

2 Veterinary Surgeons Act 1966 s 16(1)(a), (3). As to the meaning of 'veterinary surgery' see PARA 1126.

3 Veterinary Surgeons Act 1966 s 16(1)(b), (3). See *Re Hans* (1960) Times, 12 October, DC. 'Conduct disgraceful in a professional respect' is not limited either to conduct involving moral turpitude or to a veterinary surgeon's conduct in pursuit of his profession, but may extend to conduct which, although reprehensible in anyone, is, in the case of a professional man, so much more reprehensible as to be disgraceful, in the sense that it tends to bring disgrace to the profession which he practises: *Marten v Disciplinary Committee of Royal College of Veterinary Surgeons* [1966] 1 QB 1, [1965] 1 All ER 949, DC. Driving under the influence of drugs and dangerous driving was held not to be such conduct as to justify removal from the register: *Re Hans* (1960) Times, 12 October, DC, where the court substituted suspension for removal. However, violent or anti-social behaviour can be a ground for holding that a person is unfit to practise: see *Kirk v Royal College of Veterinary Surgeons* [2004] UKPC 04, [2004] All ER (D) 183 (Jun). In *Macleod v Royal College of Veterinary Surgeons* [2006] UKPC 39, 150 Sol Jo LB 1023, a finding that the appellant was guilty of disgraceful conduct for allowing unsupervised administration of medicines to animals by veterinary nurses was upheld, but suspension was set aside and a reprimand and a warning as to future conduct were substituted, on the basis that the action was a result of a genuinely mistaken, if seriously misconceived, interpretation on the appellant's part of her professional obligations. In *Plenderleith v Royal College of Veterinary Surgeons* [1996] 1 WLR 224, PC, a veterinary surgeon who employed two persons who held recognised European qualifications and who had applied for registration but had not yet been registered, was not guilty of disgraceful conduct. As to recognised European qualifications see PARA 1139. As to registration see PARA 1133.

4 Veterinary Surgeons Act 1966 s 16(1)(c), (3).

5 Veterinary Surgeons Act 1966 s 16(1), (3). These directions must be carried out by the registrar: Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations 2005 reg 12 (those regulations are scheduled to the Veterinary Surgeons and Veterinary Practitioners (Registration) Regulations Order of Council 2005, SI 2005/3517: see PARA 1142 note 1). Suspension results in the registration having no effect during the period specified in the direction: Veterinary Surgeons Act 1966 s 16(1). As to the removal of names from the register in other than disciplinary cases see PARAS 1144-1145.

Where a person is registered both in the register and in its Irish equivalent, and alleged misconduct has occurred within the jurisdiction of the Irish Council, the Irish Council is empowered to exercise its disciplinary functions against that person as if he were registered only in the Irish register: see the 1988 Agreement between the United Kingdom and Republic of Ireland governments (PARA 1137 note 1) art 4.

6 Veterinary Surgeons Act 1966 s 16(2).

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1157 Grounds for removal from the registers or suspension

TEXT AND NOTE 4--Veterinary Surgeons Act 1966 s 16(1)(c) amended: SI 2008/1824.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1158. The preliminary investigation committee.

1158. The preliminary investigation committee.

It is the duty of a committee of the Council of the Royal College of Veterinary Surgeons known as the 'preliminary investigation committee' to conduct a preliminary investigation into every disciplinary case¹ and to decide whether the case should be referred to the disciplinary committee². The preliminary investigation committee is set up by the council³ and consists of the president and vice-president of the college and three other members of the council elected by the council⁴.

1 'Disciplinary case' means a case in which it is alleged that a person is liable to have his name removed from the register or to have his registration suspended under the Veterinary Surgeons Act 1966 s 16 (see PARA 1157); ss 15(1), 27(1).

2 Veterinary Surgeons Act 1966 s 15(1). As to the disciplinary committee see PARA 1159.

3 Veterinary Surgeons Act 1966 s 15(1).

4 Veterinary Surgeons Act 1966 s 15(3), Sch 2 Pt I para 1(1). Three members, of whom at least one must be the president or a vice-president, form a quorum: Sch 2 Pt I para 1(3). The members hold office for such term as the council may determine from time to time: Sch 2 Pt I para 3. As to elections see Sch 2 Pt I para 1(2).

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1159. The disciplinary committee.

1159. The disciplinary committee.

The disciplinary committee of the Council of the Royal College of Veterinary Surgeons has the duty of considering and determining any disciplinary case¹ referred to it by the preliminary investigation committee² and any case³ for the restoration of a name to the register or the removal of a suspension of registration⁴. The disciplinary committee consists of a chairman elected by the council and of eleven other members so elected⁵. Members of the disciplinary committee must be members of the council⁶, not less than six of them being elected members and not less than one of them being a member appointed to the council by the Privy Council⁷. No person who acted as a member of the preliminary investigation committee in any case may act as a member of the disciplinary committee with respect to that case⁸. The members of the disciplinary committee hold office for such term as may be determined from time to time by the council⁹.

At any meeting of the disciplinary committee the chairman of the committee, or in his absence a committee member chosen by the committee, presides¹⁰. All its acts are decided by a majority of its members present¹¹. The quorum is five, of whom at least one must be an elected member of the council¹².

1 As to the meaning of 'disciplinary case' see PARA 1158 note 1.

2 Veterinary Surgeons Act 1966 s 15(2)(a). As to this committee see PARA 1158.

3 In any case of which the disciplinary committee has cognisance under the Veterinary Surgeons Act 1966 s 18: see PARA 1175.

4 Veterinary Surgeons Act 1966 s 15(2)(b).

5 Veterinary Surgeons Act 1966 s 15(3), Sch 2 Pt I para 2(1). In the case of proceedings relating to the supplementary veterinary register there must be added to the committee four persons registered in that register appointed by the Secretary of State: Sch 2 Pt I para 2(4).

6 Veterinary Surgeons Act 1966 Sch 2 Pt I para 2(2).

7 Veterinary Surgeons Act 1966 Sch 2 Pt I para 2(3).

8 Veterinary Surgeons Act 1966 Sch 2 Pt I para 2(5).

9 Veterinary Surgeons Act 1966 Sch 2 Pt I para 3.

10 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 3. As to these rules see PARA 1160 note 1.

11 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 25.1.

12 Veterinary Surgeons Act 1966 Sch 2 Pt I para 2(6). In the case of a disciplinary case against a person registered in the supplementary veterinary register, the quorum is seven, of whom at least one must be an elected member of the council and at least two must be persons registered in the supplementary veterinary register: Sch 2 Pt I para 2(6).

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1160. Disciplinary rules.

1160. Disciplinary rules.

Provision is made by rules¹ made by the Council of the Royal College of Veterinary Surgeons as to the procedure to be followed and the rules of evidence to be observed in disciplinary cases² before the disciplinary committee³. Such rules do not come into force until approved by order of the Privy Council⁴.

For any aspect of the conduct of proceedings for which specific provision is not made by such rules, the procedure is determined by the chairman⁵.

1 See the Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003, approved by the Privy Council and brought into force by, and scheduled to, the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004, SI 2004/1680.

2 As to the meaning of 'disciplinary case' see PARA 1158 note 1.

3 Veterinary Surgeons Act 1966 s 15(3), Sch 2 Pt II para 5. The committee may waive any procedural requirement of the rules with the consent of the parties or in any case where the interests of justice so demand: Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 28.1. See also text and note 5.

4 Veterinary Surgeons Act 1966 s 25(1): see PARA 1154. See note 1 for the approval of the current rules.

5 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 28.2.

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1161. Legal assessor.

1161. Legal assessor.

In all proceedings before the disciplinary committee in disciplinary cases¹ there must be an assessor to the committee for the purpose of advising it on questions of law arising in such cases². The assessor must be a person who has a ten year general qualification³. The power of appointing an assessor is exercisable by the council, but if no assessor appointed by the council is available to act in any particular proceedings, the committee may itself appoint an assessor so qualified for those proceedings⁴. An assessor may be appointed either generally or for any particular proceedings or class of proceedings, and holds and vacates office in accordance with the terms of the instrument under which he is appointed⁵. Any remuneration paid by the council to persons appointed to act as assessors must be at such rates as the council, with the consent of the Lord Chancellor, determines⁶.

It is the assessor's duty to be present at all proceedings before the disciplinary committee relating to the removal of a person's name from the register or the restoration of a person's name to the register, and to advise the committee on any questions of law and the admission of evidence arising which may be referred to him by the committee⁷. He must inform the committee forthwith of any irregularity in the conduct of the proceedings which comes to his knowledge, and advise the committee of his own motion where it appears to him that, but for such advice, there is a possibility of a mistake of law being made⁸.

His advice must be tendered to the committee in the presence of every party⁹, or person representing a party, to the proceedings who appears at them¹⁰; if, however, a question is referred by the committee to the assessor while the committee is deliberating in private, and the committee considers that it would be prejudicial to the discharge of its duties for the advice to be tendered in the presence of the parties or their representatives, it may be tendered in their absence, but the assessor must, as soon as may be, inform them, or see that they are informed, of the question put to him by the committee and of his advice on it, and his advice must subsequently be put in writing and a copy of it made available to every party or representative¹¹.

If on any occasion the committee does not accept the assessor's advice, a record must be made of the question referred to him, of the advice given and of the refusal to accept it, together with the reasons for the refusal, and a copy of the record must be given to every party, or person representing a party, to the proceedings who appears¹².

1 As to the meaning of 'disciplinary case' see PARA 1158 note 1.

2 Veterinary Surgeons Act 1966 s 15(3), Sch 2 Pt II para 6(1).

3 Veterinary Surgeons Act 1966 Sch 2 Pt II para 6(1) (amended by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 28). As to the meaning of 'general qualification' see **COURTS**. An advocate or solicitor in Scotland of at least ten years' standing, or a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland of at least ten years' standing, is also eligible for appointment: Veterinary Surgeons Act 1966 Sch 2 Pt II para 6(1) (as so amended; further amended in respect of Northern Ireland, as from a day to be appointed, by the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 3 para 5; at the date at which this volume states the law, no such day had been appointed).

4 Veterinary Surgeons Act 1966 Sch 2 Pt II para 6(2).

5 Veterinary Surgeons Act 1966 Sch 2 Pt II para 6(4).

6 Veterinary Surgeons Act 1966 Sch 2 Pt II para 6(5).

7 Veterinary Surgeons (Disciplinary Proceedings) Legal Assessor Rules 1967, SI 1967/684, r 3. These rules were made by the Lord Chancellor under the Veterinary Surgeons Act 1966 Sch 2 Pt II para 6(3). See generally **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 154.

8 Veterinary Surgeons (Disciplinary Proceedings) Legal Assessor Rules 1967, SI 1967/684, r 4.

9 'Party' means (1) in any case the respondent; and (2) in any case relating to fraudulent entry, any person who is alleged to have been a party to the alleged fraud: Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 2.1. The Rules are scheduled to the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004, SI 2004/1680: see PARA 1160 note 1. 'Respondent' means (a) in a case relating to conduct or to conviction, the person against whom the allegation is made; or (b) in a case relating to fraudulent entry, the person whose name it is alleged is fraudulently entered in the register: Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 2.1.

10 Veterinary Surgeons (Disciplinary Proceedings) Legal Assessor Rules 1967, SI 1967/684, r 5.

11 Veterinary Surgeons (Disciplinary Proceedings) Legal Assessor Rules 1967, SI 1967/684, r 5 proviso. Copies of written advice must be available on application to every party to the proceedings who does not appear: r 7. See *Tait v Royal College of Veterinary Surgeons* [2003] UKPC 34, 147 Sol Jo LB 536, where the legal assessor's advice was held to be wrong and a rehearing was ordered.

12 Veterinary Surgeons (Disciplinary Proceedings) Legal Assessor Rules 1967, SI 1967/684, r 6. As to copies of written advice see note 11.

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1161 Legal assessor

NOTE 3--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1162. Notice of inquiry.

1162. Notice of inquiry.

In a case relating to conduct or to conviction, as soon as may be after the case has been referred to the disciplinary committee, the clerk¹ must serve² on the respondent³ a notice of inquiry, specifying the matters alleged against him in the form of a charge or charges and stating the day⁴, time and place at which the committee will hold an inquiry into these matters, together with other specified information⁵. Where a fraudulent entry case has been referred to the committee by the preliminary investigation committee⁶, the clerk must send a copy of the notice of inquiry to any other party in the case⁷, and on the application of any other person and payment of the proper charges, the clerk must send a copy of the charge or charges to that person no more than 15 days before the date fixed for the inquiry⁸. The committee may not hold an inquiry unless it is satisfied that a notice of inquiry has been served on the respondent⁹.

Where, before the inquiry opens, it appears to the chairman that a notice of inquiry should be amended, he must direct that the notice be amended, unless it appears to him that the required amendment cannot be made without injustice¹⁰. The clerk must serve the amended notice on the respondent and, if the chairman considers that the circumstances require it, the inquiry must be postponed or adjourned¹¹.

Within ten days of service of the notice of inquiry, or such longer period as may be specified by the clerk in the notice of inquiry, the respondent must send to the clerk an acknowledgment of the notice of inquiry stating (1) that he has received the notice of inquiry; (2) whether or not he intends to attend the hearing; and (3) whether or not he intends to be represented and, where applicable, the name of the solicitor representing him¹².

1 The registrar of the council must appoint a clerk to the disciplinary committee, who may be an employee of the college but not a member of the council: Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 4. The Rules are scheduled to the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004, SI 2004/1680: see PARA 1160 note 1.

2 Service is by letter addressed to the respondent in accordance with the Veterinary Surgeons Act 1966 s 26(2): Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 5.1. Any notice or other document authorised or required to be served under the Veterinary Surgeons Act 1966 on a registered veterinary surgeon or veterinary practitioner may, without prejudice to any other method of service, be served on him by post in a letter addressed to him at his address in the relevant register or, if different, at his last known address if it appears to the registrar that such service will be more effective: s 26(2).

3 As to the meaning of 'respondent' see PARA 1161 note 9.

4 Except with the respondent's agreement, the inquiry must not be held earlier than 28 days after the date of posting of the notice of inquiry: Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 5.5.

5 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 5.1, 5.2(a), (b). As to the rules see PARA 1160. The notice must also set out (1) the respondent's right to attend the inquiry and be represented; (2) the requirement for the respondent to acknowledge receipt of the notice of inquiry; (3) the requirement for the respondent to inform the solicitor and the clerk, at least seven days before the date fixed for the hearing, whether he intends to admit or deny each charge; (4) the manner in which the respondent may apply for the postponement of the hearing of the inquiry; (5) that the inquiry may proceed in the respondent's absence; and (6) such further information as the nature of the case may require: r 5.2(c)-(h). 'Solicitor' means the solicitor nominated by the Royal College of Veterinary Surgeons to act as its solicitor for the purpose of the Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 and in relation to proceedings before the disciplinary committee includes counsel instructed by that solicitor: r 2.1.

- 6 As to the preliminary investigation committee see PARA 1158.
- 7 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 5.3.
- 8 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 5.4.
- 9 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 5.5.
- 10 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 5.6.
- 11 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 5.6. As to postponement or adjournment see r 22; and PARA 1165. The chairman and the committee also have power on their own initiative to postpone the inquiry, in which case the same notice must be served: see PARA 1165 text and note 7.
- 12 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 6.

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1163. Evidence and disclosure of documents.

1163. Evidence and disclosure of documents.

No less than 21 days before the date fixed for the inquiry¹, the solicitor² must send the respondent³ and any other party⁴ in the case (1) a copy of any documentary evidence on which the Royal College of Veterinary Surgeons intends to rely at the inquiry; (2) a list of the witnesses whom the college intends to call to give evidence against the respondent; and (3) for each witness whom the college intends to call, a witness statement, or in exceptional circumstances a summary of the matters on which the witness is to give evidence⁵.

At the same time that he serves the college's evidence, the solicitor must send to the respondent and any other party in the case any formal complaint, statement, admission, explanation or similar document sent to the college by any party to the inquiry, and any evidence which may assist the respondent's case or harm the college's case, acquired in the course of investigating and preparing the disciplinary case against the respondent, which has not already been disclosed⁶.

The solicitor and the parties may at any time agree that any evidence be placed before the committee as agreed evidence; any such agreed evidence must be supplied to the clerk⁷ not less than seven days before the date fixed for the inquiry⁸. At any time before the date fixed for the inquiry, the solicitor and the parties may, with the consent of the chairman, agree to refer any legal issue arising between any of them to the legal assessor⁹ for him to advise the committee on that issue¹⁰.

Not less than seven days before the date fixed for the inquiry, the respondent must inform the solicitor and the clerk whether or not he intends to admit or deny each charge, and in relation to any charge which he intends to deny whether he intends to admit any fact or conviction alleged in the charge¹¹.

1 As to the date for the inquiry see PARA 1162 text and note 4.

2 As to the meaning of 'solicitor' see PARA 1162 note 5.

3 As to the meaning of 'respondent' see PARA 1161 note 9.

4 As to the meaning of 'party' see PARA 1161 note 9.

5 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 7.1. The Rules are scheduled to the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004, SI 2004/1680: see PARA 1160 note 1. Where, after the solicitor has served evidence in accordance with the Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 7.1, the college acquires or identifies additional evidence relevant to the inquiry, or identifies additional witnesses whom it wishes to call in support of the disciplinary case against the respondent, the solicitor must forthwith send to the respondent and any other party in the case (1) a copy of any additional documentary evidence; (2) a witness statement for each additional witness, or in exceptional circumstances a summary of the matters on which the witness is to give evidence, and an amended list of witnesses: r 7.2.

6 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 8. In *Kirk v Royal College of Veterinary Surgeons* [2003] UKPC 3, [2003] All ER (D) 194 (Jan), a preliminary application by the appellant for disclosure of documents was dismissed: the right to disclosure was recognised but the appellant had not shown that there has been any breach of the right.

7 As to the clerk see PARA 1162 note 1.

8 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 9.1.
As to the clerk see PARA 1162 note 1.

9 As to the legal assessor see PARA 1161.

10 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 9.2.

11 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 9.3.

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1164. Legal representation.

1164. Legal representation.

Any party¹ who is an individual may appear either in person or by counsel or solicitor², and any party which is a body corporate or an unincorporated body of persons may appear by its secretary or other officer duly appointed for the purpose or by counsel or solicitor³.

¹ As to the meaning of 'party' see PARA 1161 note 9.

² Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 24.1, 24.3. The Rules are scheduled to the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004, SI 2004/1680: see PARA 1160 note 1. A respondent may be represented by a friend: Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 24.3.

³ Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 24.2, 24.3.

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1165. The hearing.

1165. The hearing.

In general all proceedings before the disciplinary committee must take place in the presence of all the parties¹ to the proceedings who appear, and must be held in public². Subject to certain exceptions³, the committee may at any time and for any purpose during or after the hearing of any proceedings deliberate in private with or without the legal assessor⁴. In addition, the committee may direct that the public be excluded from any proceedings or any part of any proceedings, where it appears to the committee that this would be in the interests of justice; but it must not make any such direction excluding the public from the announcement of a finding, determination or judgment of the committee⁵.

The disciplinary committee or the chairman may, on their own initiative or on the application of any party to the inquiry or the solicitor⁶, postpone or adjourn the hearing for such period as appears to them to be reasonable⁷. In deciding whether to postpone or adjourn a hearing, the committee must have regard to all of the circumstances and to the interests of justice⁸.

In the absence of specific provision, the procedure for any aspect of the hearing is determined by the chairman⁹.

1 As to the meaning of 'party' see PARA 1161 note 9.

2 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 21.1. The Rules are scheduled to the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004, SI 2004/1680: see PARA 1160 note 1.

3 In subject to the provisions of the Veterinary Surgeons Act 1966 Sch 2 Pt II para 6(3), and of any rules made under it (legal assessors) (see PARA 1161): Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 21.3.

4 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 21.3. As to the legal assessor see PARA 1161.

5 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 21.2.

6 As to the meaning of 'solicitor' see PARA 1162 note 5.

7 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 22.1. Any application for the postponement of a hearing of the committee must be made in writing to the clerk: r 22.2. Where the respondent applies for the postponement or adjournment of any hearing of the committee on grounds of ill health, the application for postponement or adjournment should be accompanied by appropriate medical certification; and the committee may, if it is not satisfied that the medical certification accompanying the application is sufficient, direct that the respondent should provide further evidence of his ill health or should submit to examination by a medical practitioner appointed for that purpose by the committee: r 22.3. As to the clerk see PARA 1162 note 1.

8 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 22.4. The clerk must, as soon as possible, notify the respondent, any other party in the case and the solicitor of any decision to postpone or adjourn an inquiry and of the date fixed for the hearing of the postponed or adjourned inquiry: r 22.5.

9 See PARA 1160 text and note 5.

UPDATE

1133-1165 The register of veterinary surgeons ... The hearing

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1166. The case against the respondent.

1166. The case against the respondent.

If the respondent¹ appears at the hearing, each charge must be read in his presence², when he may, if he so desires, object to the charge, or any part of it, in point of law³. The solicitor⁴ may answer any such objection, and the respondent has the right of final reply. If the objection is upheld no further proceedings may be taken on that charge or that part of the charge to which the objection relates⁵. The respondent must be asked whether he admits each charge⁶. In relation to any charge that is denied, the respondent must be asked whether each conviction or fact within the charge is admitted⁷.

The solicitor may make an opening speech and (1) if the respondent has not admitted every conviction or fact alleged, must adduce evidence of any conviction or fact not admitted⁸; (2) in a conviction case⁹, must address the committee and may adduce evidence and make submissions, to show that if the conviction alleged is proved or admitted, the nature and circumstances of the offence are such as to render the respondent unfit to practise veterinary surgery¹⁰; (3) in a conduct case¹¹, must address the committee and may adduce evidence and make submissions, to show that if the facts alleged are proved or admitted, the respondent is guilty of disgraceful conduct in a professional respect¹²; (4) in a fraudulent entry case¹³, must address the committee and may adduce evidence and make submissions, to show that if the facts alleged are proved or admitted, the name of the respondent was fraudulently entered on a register¹⁴.

The respondent must have the opportunity to cross-examine any witness whom the college calls to give evidence in support of the charges against him¹⁵.

If the respondent does not appear, the committee may accept an admission made in writing by the respondent¹⁶.

1 As to the meaning of 'respondent' see PARA 1161 note 9.

2 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 10.1. The Rules are scheduled to the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004, SI 2004/1680: see PARA 1160 note 1. If the respondent does not appear, the committee may decide to proceed in the respondent's absence if it is satisfied that the notice of inquiry was properly served and that it is in the interests of justice to do so: Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 10.4. If there are two or more respondents, the procedure here expounded applies with the necessary adaptations and subject to any directions given to the committee as to the order in which the proceedings are to be taken by or in relation to the several respondents, so, however, to ensure that any right of a respondent under the rules may be exercised separately by each respondent who desires to invoke it: r 16.

3 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 10.2.

4 As to the meaning of 'solicitor' see PARA 1162 note 5.

5 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 10.2.

6 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 10.3.

7 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 10.3.

8 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 11.1(a). If no evidence is adduced concerning any particular charge, and the respondent has made no admission of the relevant conviction or facts, the committee must make a finding on that charge in favour of the respondent and the chairman must announce that finding: r 11.3.

9 'Conviction case' means a case which has been referred by the preliminary investigation committee to the disciplinary committee where it is alleged that the respondent has been convicted in the United Kingdom or elsewhere of a criminal offence rendering him unfit to practise veterinary surgery: Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 2.1.

10 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 11.1(b).

11 'Conduct case' means a case which has been referred by the preliminary investigation committee to the disciplinary committee where it is alleged that the respondent has been guilty of disgraceful conduct in any professional respect: Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 2.1.

12 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 11.1(c).

13 'Fraudulent entry case' means a case which has been referred by the preliminary investigation committee to the disciplinary committee where it is alleged that the name of a person has been fraudulently entered on a register: Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 2.1.

14 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 11.1(d).

15 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 11.2.

16 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 11.4.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1167. The case for the respondent and the right of reply.

1167. The case for the respondent and the right of reply.

The respondent¹ may adduce evidence concerning any conviction or fact which he has not admitted, and may address the disciplinary committee². In a conviction case³, the respondent may adduce evidence as to the nature and circumstances of the offence, to show that they do not render him unfit to practise veterinary surgery, and may address the committee⁴. In a conduct case⁵, the respondent may adduce evidence to show that the facts alleged are not such as to constitute disgraceful conduct in any professional respect, and may address the committee⁶. In a fraudulent entry case⁷, the respondent may adduce evidence to show that the facts alleged are not such as to establish that his name was fraudulently entered on a register, and may address the committee⁸. The solicitor⁹ has the opportunity to cross-examine any witness whom the respondent calls in support of his case¹⁰.

In relation to any charge concerning which evidence has been adduced, the respondent may submit that the solicitor has not adduced sufficient evidence upon which the committee could find (1) the conviction or facts in the charge proved; or (2) that a conviction renders the respondent unfit to practise veterinary surgery; or (3) that the facts alleged are such as to constitute disgraceful conduct in a professional respect; or (4) that the facts alleged are such as to establish that the name of the respondent was fraudulently entered on a register¹¹.

The solicitor may address the committee by way of reply to the respondent's case¹²; and at the conclusion of the solicitor's address, if any, the respondent may address the committee by way of final reply¹³. If, at any stage, the respondent has made a submission to the committee on a point of law the solicitor has the right of reply limited to that submission, and the respondent has the right of final reply¹⁴.

1 As to the meaning of 'respondent' see PARA 1161 note 9.

2 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 12.2. The Rules are scheduled to the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004, SI 2004/1680: see PARA 1160 note 1.

3 As to the meaning of 'conviction case' see PARA 1166 note 9.

4 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 12.3.

5 As to the meaning of 'conduct case' see PARA 1166 note 11.

6 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 12.4.

7 As to the meaning of 'fraudulent entry case' see PARA 1166 note 13.

8 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 12.5.

9 As to the meaning of 'solicitor' see PARA 1162 note 5.

10 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 12.6.

11 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 12.1.

12 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 13.1.

13 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r
13.2.

14 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r
13.3.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1168. Witnesses and evidence.

1168. Witnesses and evidence.

The disciplinary committee may administer oaths for the purpose of any proceedings before it, and any party¹ to the proceedings may issue writs of subpoena ad testificandum and duces tecum, but no person can be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of a claim in court². The committee may require any person to be called as a witness in any proceedings before it, whether or not the parties consent thereto³.

The committee may receive oral evidence whether or not under oath, documentary evidence, or other evidence of any fact which appears to it relevant to the inquiry into the case before it⁴. The committee may receive evidential material prior to the hearing of an inquiry⁵. The committee may accept admissions made by any party and may in such case dispense with proof of the matters admitted⁶. Subject to that, any charge which may result in a direction by the committee that a respondent⁷ be removed from the register, must be proved so that the committee is satisfied to the highest civil standard of proof⁸.

The disciplinary proceedings are in the nature of civil proceedings, and the committee may allow such further evidence, amendments and submissions and give such further directions as it considers appropriate in all the circumstances⁹. Members of the committee or the legal assessor¹⁰ may put questions to the solicitor¹¹, any party in the case or any witness¹².

1 As to the meaning of 'party' see PARA 1161 note 9.

2 Veterinary Surgeons Act 1966 s 15(3), Sch 2 Pt II para 4(1). The Supreme Court Act 1981 s 36 (see **CIVIL PROCEDURE** vol 11 (2009) PARAS 1008, 1016), applies to compel the attendance of witnesses who are out of the jurisdiction but who are within the United Kingdom: Veterinary Surgeons Act 1966 Sch 2 Pt II para 4(2) (amended by the Supreme Court Act 1981 s 52(1), Sch 5; further amended, as from a day to be appointed, by the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 1 para 1(2); at the date at which this volume states the law, no such day had been appointed).

3 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 23.7. The Rules are scheduled to the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004, SI 2004/1680: see PARA 1160 note 1. Any witness summons requiring the attendance of a witness or the production of documents before the committee pursuant to the Veterinary Surgeons Act 1966 Sch 2 Pt II para 4(1) or (2) must be issued out of the High Court or the High Court of Justice in Northern Ireland, as the case may be: Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 23.7.

4 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 23.1. All documents put before the committee are deemed to be authentic unless proved otherwise to the satisfaction of the committee: r 23.2. Where the decision of any court or tribunal is relevant to an issue which arises before the committee (1) the fact that a person has been convicted of a criminal offence may be proved by the production of a certified copy of the certificate of conviction or an extract conviction; (2) the judgment or order of any civil court may be proved by producing a certified copy of that judgment or order; and (3) the finding and judgment of any tribunal exercising a professional disciplinary jurisdiction may be proved by producing a certified record of the finding and judgment: r 23.3. Unless proved otherwise to the satisfaction of the committee (a) the findings of fact of any court or tribunal are admissible as conclusive evidence of those facts; (b) the records of proceedings before the committee under r 26.1 (see PARA 1169) are conclusive as to the proceedings before the committee; (c) certificates of birth, marriage and death are conclusive evidence of the births, marriages or deaths to which they refer; (d) the records (including the registers) of the Royal College of Veterinary Surgeons are conclusive as to the professional qualifications, the registration, the address and the identity of the respondent and of any other veterinary surgeon or practitioner: r 23.4.

5 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 23.1. This is subject to any other provision of the rules: r 23.1.

- 6 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 23.5.
- 7 As to the meaning of 'respondent' see PARA 1161 note 9.
- 8 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 23.6.
- 9 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 14.1.
- 10 As to the legal assessor see PARA 1161.
- 11 As to the meaning of 'solicitor' see PARA 1162 note 5.
- 12 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 14.2.

UPDATE

1168-1176 Witnesses and evidence ... Restoration to the registers

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1168 Witnesses and evidence

NOTE 2--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1169. Record of proceedings.

1169. Record of proceedings.

The clerk¹ must arrange for all public hearings of the disciplinary committee to be recorded². Any party³ to the proceedings, on applying to the clerk and paying the proper charges, must be provided with a copy of the record of any part of the proceedings at which he was entitled to be present⁴. These provisions do not apply to the deliberations of the committee⁵.

1 As to the clerk see PARA 1162 note 1.

2 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 26.1. The Rules are scheduled to the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004, SI 2004/1680: see PARA 1160 note 1.

3 As to the meaning of 'party' see PARA 1161 note 9.

4 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 26.2.

5 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 26.3.

UPDATE

1168-1176 Witnesses and evidence ... Restoration to the registers

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1170. Decision of the committee.

1170. Decision of the committee.

At the close of the evidence and submissions¹, the disciplinary committee must consider each charge separately and decide whether or not each fact or conviction alleged in each charge has been proved, and the chairman of the committee must announce the committee's findings².

In a conduct case³, where the committee finds that the charge has been proved, the finding of the committee must be that the respondent is guilty of disgraceful conduct in a professional respect⁴; and where the Committee finds that the charge has not been proved, the finding of the Committee must be that the respondent is not guilty of disgraceful conduct in a professional respect⁵.

Every decision, determination, direction, finding and judgment of the committee or chairman must be recorded in writing⁶. Written notification of every decision, determination, direction, finding and judgment of the committee or chairman must be sent to the respondent or applicant for restoration to the register⁷; but the chairman may dispense with this requirement⁸.

1 As to the evidence and submissions see PARAS 1166-1168.

2 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 15.1. The Rules are scheduled to the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004, SI 2004/1680: see PARA 1160 note 1. The committee may at its discretion allow further submissions to ascertain whether there is any evidence not already before it upon which the respondent would wish to rely to support any submission that a conviction does not render him unfit to practise veterinary surgery, or that the facts found do not constitute disgraceful conduct in a professional respect or do not establish that his name was fraudulently entered on a register: Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 15.2. Where the respondent is allowed to make such submissions, the solicitor may address the committee by way of reply, and the respondent has the right of final reply: r 15.2. On the conclusion of the proceedings, the committee must consider all of the evidence and submissions and determine whether each charge against the respondent has been established, and the chairman must announce the Committee's findings: r 15.3. As to the meaning of 'respondent' see PARA 1161 note 9; and as to the meaning of 'solicitor' see PARA 1162 note 5.

3 As to the meaning of 'conduct case' see PARA 1166 note 11.

4 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 15.4.

5 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 15.5.

6 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 27.1.

7 I.e. an applicant under the Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 20. See PARA 1175.

8 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 27.2; subject to any provision in the Veterinary Surgeons Act 1966 or the Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003.

UPDATE

1168-1176 Witnesses and evidence ... Restoration to the registers

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1171. Voting.

1171. Voting.

Acts of the disciplinary committee are decided by a majority of the members present¹. Any questions put to the vote must be put in the form of a motion². Where on any question the votes are equal, the chairman does not have a casting vote but the question is deemed to have been resolved in favour of the respondent, except in the case of an application for restoration to the register³.

1 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 25.1. The Rules are scheduled to the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004, SI 2004/1680: see PARA 1160 note 1.

2 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 25.2. The chairman himself may vote for or against the motion: r 25.2; but see text and note 3.

3 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 25.3. For these purposes, a decision to postpone judgment is taken to be a decision in favour of the respondent or applicant for restoration unless he has indicated to the committee that he is opposed to postponement: r 25.3. As to the meaning of 'respondent' see PARA 1161 note 9. As to the postponement of judgment see PARAS 1172-1173.

UPDATE

1168-1176 Witnesses and evidence ... Restoration to the registers

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1172. Procedure where charges are established.

1172. Procedure where charges are established.

In a fraudulent entry case¹, if the respondent² admits or the disciplinary committee determines that the entry was fraudulently made, it must make a direction in writing, signed by the chairman of the committee, that the entry be removed from the register³.

In a conduct or conviction case⁴, where the respondent has admitted the charge or the committee has found that the charge has been established, the solicitor⁵ may address the committee, and may adduce evidence and make submissions, as to the character and previous history of the respondent⁶. The respondent may then address the committee, and may adduce evidence and make submissions, by way of mitigation⁷. The committee must next consider and determine whether to give its judgment concerning the respondent forthwith or to postpone judgment for a period not exceeding two years; the chairman must announce the committee's determination⁸. If the committee postpones its judgment, it may do so subject to undertakings from the respondent⁹. If the committee gives its judgment forthwith, it may (1) direct the registrar of the Royal College of Veterinary Surgeons to remove the respondent's name from the register; (2) direct that the respondent's registration be suspended for a specified period; (3) reprimand the respondent and/or warn the respondent as to his future conduct, and the chairman must announce the committee's judgment accordingly¹⁰.

1 As to the meaning of 'fraudulent entry case' see PARA 1166 note 13.

2 As to the meaning of 'respondent' see PARA 1161 note 9.

3 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 17. The Rules are scheduled to the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004, SI 2004/1680: see PARA 1160 note 1.

4 As to the meaning of 'conduct case' see PARA 1166 note 11; and as to the meaning of 'conviction case' see PARA 1166 note 9.

5 As to the meaning of 'solicitor' see PARA 1162 note 5.

6 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 18.1(a).

7 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 18.1(b). If the respondent does not attend the inquiry, the committee must take into consideration any written plea in mitigation submitted by the respondent: r 18.1(c).

8 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 18.2.

9 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 18.3. Any such undertakings must be accepted by the respondent at the hearing before the committee, and must be set out in the written record of the committee's determination and in the notice of direction served on the respondent in accordance with the Veterinary Surgeons Act 1966 s 16(2) (see PARA 1157): Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 18.3. As to the procedure on postponement see PARA 1173.

10 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 18.4. If the committee reserves reasons for its judgment, the clerk must serve those reasons with the notice of direction under the Veterinary Surgeons Act 1966 s 16(2): Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 18.5. As to the clerk see PARA 1162 note 1.

UPDATE

1168-1176 Witnesses and evidence ... Restoration to the registers

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1173. Procedure on postponement of judgment.

1173. Procedure on postponement of judgment.

Where the judgment of the disciplinary committee stands postponed¹, and it appears to the chairman of the committee from information received since the inquiry that the respondent² has failed to comply with any undertaking given to the committee or that the proceedings should be resumed for any other reason, the chairman may direct that the proceedings be resumed³. Where the committee is to resume the hearing of an inquiry, then not later than 28 days before the day fixed for the resumption of the proceedings, the clerk⁴ must send to the respondent and the solicitor⁵ a notice of resumption and a copy of the information received since the inquiry⁶, stating the day, time and place at which the proceedings are to be resumed and inviting the respondent to appear; and inviting the respondent and the solicitor to send to the clerk, not later than ten days before the day fixed for the resumption of proceedings, any written evidence or statement relating to the respondent's conduct or to any relevant facts or matters since the first hearing of the inquiry⁷.

At any hearing at which the proceedings are resumed, the solicitor must set out for the committee the position in which the case stands⁸. The committee may receive oral or documentary evidence in relation to the case, or in relation to the conduct or any convictions of the respondent since the hearing of the inquiry⁹, and the solicitor and the respondent are entitled to address the committee¹⁰. The committee must then consider and determine whether it should further postpone its judgment¹¹, and (1) if the committee determines to postpone its judgment again, it will stand further postponed for a second and final period not exceeding two years¹²; (2) if the committee determines that judgment is not to be postponed again, it must give judgment¹³; (3) the chairman must announce the committee's determination and, where it is not further postponed, its judgment¹⁴.

1 As to postponement of judgment see PARA 1172.

2 As to the meaning of 'respondent' see PARA 1161 note 9.

3 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 19.1. The Rules are scheduled to the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004, SI 2004/1680: see PARA 1160 note 1.

4 As to the clerk see PARA 1162 note 1.

5 As to the meaning of 'solicitor' see PARA 1162 note 5.

6 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 19.2(a).

7 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 19.2(b). At any resumed proceedings, any new charge alleged against the respondent under the rules must be dealt with in accordance with Pt III (rr 10-16) (see PARA 1166 et seq); but this is not to prevent the committee from receiving evidence of any conduct of the respondent or conviction recorded against the respondent which has not been made the subject of a charge under the rules: r 19.4. So far as is reasonably practicable, proceedings resumed under r 19 must take place before a committee having the same constitution as the committee which heard the inquiry; nevertheless, subject to the provisions of the Veterinary Surgeons Act 1966, the validity of resumed proceedings may not be called in question by reason only of the fact that the committee is differently constituted: Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 19.5.

8 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 19.3(a).

9 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 19.3(b).

10 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 19.3(c).

11 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 19.3(d).

12 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 19.3(d)(i).

13 In the Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 18.4 (see PARA 1172) applies: r 19.3(d)(ii).

14 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 19.3(d)(iii). As to the announcement of judgment see PARA 1172.

UPDATE

1168-1176 Witnesses and evidence ... Restoration to the registers

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1174. Appeals.

1174. Appeals.

A person whose name the disciplinary committee of the Council of the Royal College of Veterinary Surgeons has directed to be removed from the register or a person whose registration it has directed to be suspended¹ may appeal against the direction to the Judicial Committee of the Privy Council within 28 days of the service of notice of the direction². The appeal is brought by entering an appearance in the Privy Council registry and at the same time lodging a petition of appeal there³. The council of the college may appear as respondent and is deemed to be a party on any such appeal for the purpose of enabling directions to be given as to the costs of the appeal whether it appears or not⁴. It must deliver to the appellant a certified typewritten record of the proceedings before the disciplinary committee and, if it wishes to appear, must enter an appearance forthwith in the registry⁵. When each side has lodged its case in the appeal⁶ the appeal may be set down for hearing⁷.

Certain of the general rules of procedure applicable to the exercise of the appellate jurisdiction of the Judicial Committee of the Privy Council apply with necessary modifications to appeals from determinations of the disciplinary committee⁸.

1 As to such directions see PARA 1157; and as to the registers see PARAS 1133-1134.

2 Veterinary Surgeons Act 1966 s 17(1). The Judicial Committee Act 1833 applies in relation to appeals from the disciplinary committee as it applies in relation to such courts as are mentioned in s 3 thereof: Veterinary Surgeons Act 1966 s 17(1). As to the Judicial Committee see **COURTS** vol 10 (Reissue) PARA 401 et seq. Where a person desiring to appeal as a poor person proves by affidavit to the satisfaction of the Privy Council registrar that he is not worth £500 in the world, excepting his wearing apparel, and that he is unable to provide sureties, and lodges a certificate of counsel that he has reasonable grounds of appeal, the appeal must proceed *in forma pauperis* and the appellant will not be required to pay any council office fees: Judicial Committee (Veterinary Surgeons Rules) Order 1967, SI 1967/1150, Schedule rr 1, 16 (r 16 amended by virtue of SI 1982/1676). In the equivalent provision in the Judicial Committee (General Appellate Jurisdiction) Rules 1982, SI 1982/1676, the sum of £500 has been increased to £2,000: see Sch II r 8 (amended by SI 2003/1879).

The Judicial Committee (Veterinary Surgeons Rules) Order 1967, SI 1967/1150, was made under the Veterinary Surgeons Act 1966 s 17(1). As to council office fees see the Judicial Committee (Veterinary Surgeons Rules) Order 1967, SI 1967/1150, Schedule r 14, which refers to the Schedule of fees to those rules; however, it is conceived that the correct schedule of fees may now be found in the Judicial Committee (General Appellate Jurisdiction) Rules 1982, SI 1982/1676, Sch II, in Sch B (substituted by SI 2003/1879).

3 Judicial Committee (Veterinary Surgeons Rules) Order 1967, SI 1967/1150, Schedule rr 1, 2. The petition of appeal must recite succinctly the principal steps in the proceedings leading up to the appeal but must not contain argumentative material or travel into the merits of the case: Schedule r 3. A copy of the petition must be served on the council of the college: Schedule r 2.

4 Veterinary Surgeons Act 1966 s 17(2).

5 Judicial Committee (Veterinary Surgeons Rules) Order 1967, SI 1967/1150, Schedule r 4. The record must be delivered to the appellant with all convenient speed after the receipt of the copy of the petition: Schedule r 4. Within 21 days of the receipt of the record the appellant must lodge it, together with eight copies, in the registry, and transmit three copies to the council of the college: Schedule r 5. For the form of copies see Schedule rr 1, 6.

6 Within 28 days of the lodging of the record the appellant must lodge eight copies of his or its case in the appeal, such copies being signed by a least one of the counsel who attends the hearing or the appeal or by the party himself if he conducts his appeal in person: Judicial Committee (Veterinary Surgeons Rules) Order 1967, SI 1967/1150, Schedule r 7. The council of the college must within 28 days of the transmission to it of the three copies of the record lodge eight copies of its case in the appeal signed by at least one of the counsel who attends the hearing: Schedule r 8. The cases must consist of numbered paragraphs stating as concisely as possible the circumstances out of which the appeal arises, the contentions to be urged by the parties, and the

reasons of appeal: Schedule r 9. Where the appellant, having lodged a petition of appeal, does not proceed on it in time, the council may petition Her Majesty in Council praying that the appeal be dismissed for non-prosecution: Schedule r 13. The appellant may withdraw his appeal on a petition to Her Majesty in Council: Schedule r 12.

7 Judicial Committee (Veterinary Surgeons Rules) Order 1967, SI 1967/1150, Schedule r 10. If the council of the college does not appear or lodge its case in time the appeal may be set down ex parte if the appellant's case has been lodged: Schedule r 11. Upon the setting down of the appeal each side must send three copies of its case to the other: Schedule r 10.

8 See the Judicial Committee (General Appellate Jurisdiction) Rules 1982, SI 1982/1676, rr 42, 60, 71, 72, 74, 77-81, 83, 84-86, as applied to appeals under the Judicial Committee (Veterinary Surgeons Rules) Order 1967 Schedule rr 15, 17, 18; otherwise those rules do not apply: Judicial Committee (Veterinary Surgeons Rules) Order 1967, SI 1967/1150, Schedule rr 15, 17, 18 (all amended by SI 1982/1676).

UPDATE

1168-1176 Witnesses and evidence ... Restoration to the registers

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1174 Appeals

TEXT AND NOTES--SI 1967/1150, SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1175. Restoration to the registers.

1175. Restoration to the registers.

Where the name of a person has been removed from the register of veterinary surgeons or the supplementary veterinary register¹ in pursuance of a direction² by the disciplinary committee of the Council of the Royal College of Veterinary Surgeons, the name of that person must not again be entered in the appropriate register unless application is made to the committee for restoration and it directs restoration³. Similarly where a person's registration in either register is suspended in pursuance of such a direction, his name must not be entered in the register so long as the suspension has effect unless such application for restoration is made and the committee directs restoration⁴. Application may not be made within ten months of the date of removal or suspension⁵ or of a previous application⁶.

The committee may determine its own procedure on the hearing of the application⁷, except that it must afford the applicant an opportunity of being heard and of adducing evidence⁸. An application to the committee for the restoration of a name to the register or the early removal of a suspension of registration must be made in writing to the clerk⁹ and must set out the grounds for the application¹⁰. On receipt of such an application, the application must be listed for hearing within three months¹¹. The applicant may submit with his application any documentary evidence which he wishes to have drawn to the attention of the committee in support of his application, including references¹². The chairman and the solicitor may invite the applicant to provide any further evidence, including evidence concerning the applicant's identity, character and conduct since his name was removed from the register¹³. The solicitor is entitled to address the committee, and to adduce evidence and make submissions, in opposition to the application¹⁴.

1 As to these registers see PARAS 1133-1134.

2 See under the Veterinary Surgeons Act 1966 s 16 (see PARA 1157): s 18(1).

3 Veterinary Surgeons Act 1966 s 18(1).

4 Veterinary Surgeons Act 1966 s 18(2).

5 Veterinary Surgeons Act 1966 s 18(3)(a).

6 Veterinary Surgeons Act 1966 s 18(3)(b).

7 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 20.7. The Rules are scheduled to the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004, SI 2004/1680: see PARA 1160 note 1.

8 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 20.6(a).

9 As to the clerk see PARA 1162 note 1.

10 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 20.1. The clerk must provide a copy of the application and supporting documentary evidence (see text and note 12) to the solicitor: r 20.4. As to the meaning of 'the solicitor' see PARA 1162 note 5.

11 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 20.3.

12 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 20.2.

13 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 20.5.

14 Royal College of Veterinary Surgeons Disciplinary Committee (Procedure and Evidence) Rules 2003 r 20.6(b).

UPDATE

1168-1176 Witnesses and evidence ... Restoration to the registers

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/ANIMALS (VOLUME 2 (2008) 5TH EDITION)/12. VETERINARY SURGEONS AND SURGERY/(5) DISCIPLINE/1176. When directions of disciplinary committee take effect.

1176. When directions of disciplinary committee take effect.

Where an appeal is brought against a direction¹ of the disciplinary committee of the Council of the Royal College of Veterinary Surgeons as regards the removal of a person's name from the register or his suspension from registration, the direction takes effect if and when the appeal is dismissed and not otherwise². Where no appeal is brought within the time limited for the appeal or it is brought but then withdrawn or struck out for want of prosecution, the direction takes effect on the expiration of that time³ or, as the case may be, on the withdrawal or striking out of the appeal⁴.

1 As to such directions see PARA 1157.

2 Veterinary Surgeons Act 1966 s 17(3)(c).

3 Veterinary Surgeons Act 1966 s 17(3)(a).

UPDATE

UPDATE

1168-1176 Witnesses and evidence ... Restoration to the registers

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.